

Exhibit B

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10943-mew

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5 In the Matter of:

6

7 VOYAGER DIGITAL HOLDINGS, INC.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 January 24, 2023

17 11:03 AM

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21 B E F O R E :

22 HON MICHAEL E. WILES

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KB

1 HEARING re Motion by Celsius Network LLC lifting the
2 automatic stay and granting leave to file late proof of
3 claim Objections filed

4
5 HEARING re Second motion extending the Debtors' exclusive
6 periods to file a chapter 11 plan and solicit acceptances
7 thereof and granting related relief

8 ***CERTIFICATE OF NO OBJECTION FILED***

9
10 HEARING re Application authorizing the retention and
11 employment of Katten Muchin Rosenman LLP as special counsel
12 for Debtor on behalf of and at the sole direction of the
13 independent director, effective as of November 11, 2022

14 ***CERTIFICATE OF NO OBJECTION FILED***

15
16 HEARING re Application authorizing the retention and
17 employment of ArentFox Schiff LLP as special counsel
18 effective as of November 10, 2022

19 ***CERTIFICATE OF NO OBJECTION FILED***

20
21 HEARING re Application authorizing the retention and
22 employment of Potter Anderson & Corroon LLP as Delaware
23 counsel effective as of November 30, 2022

24 ***CERTIFICATE OF NO OBJECTION FILED***

25

1 HEARING re Final hearing RE: motion authorizing the Debtors
2 to continue to operate their cash management system, honor
3 certain prepetition obligations related thereto, maintain
4 existing business forms, and continue to perform
5 intercompany transactions, granting superpriority
6 administrative expense status to postpetition
7 intercompany balances, and granting related relief
8 Limited objection filed
9 Adjourned Reset for 02/07/2023 at 10:00 am

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25 Transcribed by: Sonya Ledanski Hyde

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15
16 CHRIS FERRARO, Celsius

17
18 ALSO PRESENT TELEPHONICALLY:

19 DANIEL M. EGGERMANN

20 ETHAN TROTZ

21 ERIC REUBEL

22 LAUREN KELLY GREENBACKER

23 RICHARD COCHRANE

24 ANGELA HERRING

25 BENJAMIN NICKERSON

1 GREGORY PESCE
2 TOM ST. HENRY
3 ADAM SWINGLE
4 BENJAMIN BELLER
5 DAVID TURETSKY
6 RICK ARCHER
7 STEVEN REISMAN
8 MARTIN ALLOCATI
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12 VICTOR UBIERNA DE LAS HERAS
13 JASON DIBATTISTA
14 CATHY TA
15 TAYLOR HARRISON
16 RANDALL PULMAN
17 ERIK HANNER
18 LUKE PORCARI
19 DUSTIN PETERSON
20 SUSAN GOLDEN
21 CHRISTINE OKIKE
22 CHRISTOPHER SAMIS
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1 JONATHAN WEICHSELBAUM
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7 TRACY HENDERSHOTT
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14 CHARLES GIBBS
15 GREGG STEINMAN
16 GRAYSON WILLIAMS
17 CRAIG RASILE

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P R O C E E D I N G S

THE COURT: Good morning, everybody. Are the parties ready on the Voyager matter?

MS. SMITH: Good morning. Yes, Your Honor.

THE COURT: (Indiscernible) --

MS. SMITH: For the record -- I apologize. For the record, Allyson Smith from Kirkland and Ellis, counsel to the Debtors. We only have a handful of matters on the agenda today, most of which are uncontested and for which we filed certificates of no objection. So unless Your Honor prefers to proceed differently, I propose addressing those first and then turning to the Celsius matter.

THE COURT: Yes, I think that makes sense.

MS. SMITH: Okay. Great. Thank you, Your Honor. Skipping down then to Agenda Item Number 2, Debtor Voyager Digital LTD's application to retain Katten as special counsel on behalf of its independent director. In support of the application, three declarations were filed, the original by Mr. Steve Reisman, one supplemental by him disclosing rate changes, and one by Mr. Matt Ray. We'd ask that those three declarations be moved into evidence absent objection.

THE COURT: Are there any objections to the admission of the declarations into evidence? Does anyone wish to cross-examine the declarants? All right. The

1 objections are -- excuse me, the declarations are admitted.

2 MS. SMITH: Thank you. We received no formal or
3 informal objections. And as I noted, we did file the CNO on
4 Friday. Unless the Court has any questions or concerns to
5 address, we would ask that this application be granted.

6 THE COURT: As to the Katten Muchin application,
7 if I recall correctly, there were some Creditors of TopCo
8 who raised some issues in connection with the plan that was
9 previously proposed about how some of the arrangements would
10 be treated, and whether it was fair to TopCo. Who were
11 those Creditors? Can you remind me?

12 MS. SMITH: I believe it may -- you may be
13 referred to the equity holders and --

14 THE COURT: (Indiscernible).

15 MS. SMITH: -- referencing the intercompany
16 obligations?

17 THE COURT: Yeah, maybe it was equity holders. I
18 can't remember.

19 MS. SMITH: Yeah, and that's actually precisely
20 what Katten is being retained to assist in that analysis as
21 to whether certain intercompany obligations are more
22 properly categorized as capital contributions or loans.

23 THE COURT: But the declaration says that Katten
24 also represents some people who hold debt of TopCo and may
25 continue to represent them in connection with trading

1 activities involving such debt. Is that right?

2 MS. SMITH: I believe the declaration states they
3 just represent a trade Creditor that has a pre-petition
4 claim of less than 75,000, and they've implemented screening
5 measures to wall off those representations.

6 THE COURT: Hang on. I'm not sure that's exactly
7 -- was that Otter Anderson or was that Katten Muchin?
8 Katten Muchin just says that they have represented certain
9 holders of TopCo debt in connection -- and will -- may
10 represent them in connection with trading activity involving
11 such debt. Is Katten on the phone? They can tell us what
12 that is.

13 MR. ROCHESTER: Yes, Your Honor. For the record,
14 Shaya Rochester from Katten Muchin. In the recent
15 declaration that was filed at Docket 718, there are specific
16 disclosures in Paragraph 25A. And there's a reference to
17 representing a trade Creditor of TopCo that has a pre-
18 petition (indiscernible) as Ms. Smith said, and screening
19 procedures are put in place. That is the only connection
20 other than that and then what was in B in terms of
21 representation of trade Creditors.

22 THE COURT: And is there any matter other than
23 these intercompany matters for which Katten would be
24 retained?

25 MS. SMITH: No, Your Honor.

1 THE COURT: Does TopCo have separate assets that
2 would enable it to pay counsel here?

3 MS. SMITH: I believe they do have a limited
4 number of assets.

5 THE COURT: Okay. And it's only TopCo that would
6 be obligated on this obviously, correct?

7 MS. SMITH: Correct.

8 THE COURT: All right. Does the U.S. Trustee have
9 any issue with this?

10 MR. MORRISSEY: Your Honor, Richard Morrissey for
11 the U.S. Trustee. The U.S. Trustee has reviewed all the
12 declarations and has no objection. Thank you.

13 THE COURT: Okay. I think I would like the order
14 to be a little more specific as to just what Katten Muchin
15 is going to be doing because it's not at all clear. It's a
16 rather vague description in the papers. If it's going to be
17 looking at the intercompany claims, then it should
18 correspond to the more specific order that you had for
19 ArentFox in that regard. Okay?

20 MS. SMITH: Of course. We can certainly revise
21 the order, Your Honor, and resubmit.

22 THE COURT: As to ArentFox, that affidavit says
23 that ArentFox represents the National Women's Soccer League
24 in these --

25 MS. SMITH: Yes.

1 THE COURT: -- cases. Is that correct?

2 MS. SMITH: Yes, but my understanding is that they
3 obtained a conflict waiver from the Women's Soccer League.

4 THE COURT: Does the U.S. Trustee have any issue
5 in that regard? Mr. Morrissey?

6 MR. MORRISSEY: I'm sorry, Your Honor. I was on
7 mute. The U.S. Trustee has no objection to that, and
8 accepts the fact that ArentFox did receive a waiver.

9 MR. GLEIT: And Your Honor, it's Jeff Gleit from
10 ArentFox. May I be heard?

11 THE COURT: Yes.

12 MR. GLEIT: Okay. Your Honor, just in addition to
13 the waiver, we also have an ethical law. So the attorneys
14 working on the Voyager matter on behalf of the independent
15 director are not involved with anything to do with the
16 National Women's Soccer League.

17 THE COURT: All right. Very good. I'll approve
18 those two retentions, and I don't have any issue as to
19 Potter Anderson. (Indiscernible) case, obviously you need
20 to have counsel there.

21 MS. SMITH: Thank you, Your Honor. We'll get the
22 revised Katten order submitted to you shortly after this
23 hearing.

24 THE COURT: Okay.

25 MS. SMITH: Moving then to the last item prior to

1 turning it over to Celsius is our exclusivity extension
2 motion. The Debtors are seeking to extend the exclusivity
3 period another 60 days to March 3rd, which as you know is
4 right after our scheduled confirmation hearing on the 2nd.
5 We did negotiate this with the Committee prior to filing it
6 in December, and the filed document incorporated their
7 comments. Otherwise, no objections or comments were
8 received, and a CNO was also filed on Friday. So unless
9 Your Honor has any additional questions, we would ask that
10 this order be entered.

11 THE COURT: Okay. Is there anybody on the phone
12 that wishes to be heard on this? Okay. I'll enter the
13 order. Just submit it to chambers.

14 MS. SMITH: Thank you, Your Honor. Will do. With
15 that then, I am going to cede the podium to the Paul
16 Hastings team, who will be handling the remaining matter.

17 THE COURT: Okay.

18 Thank you, Allyson. Good morning, Your Honor. My
19 name is Matt Murphy from Paul Hastings. Before turning it
20 over to my colleague Mike Whelan, I just wanted to address
21 with the Court and the Office of the United States Trustee
22 it was my expectation to get our retention application on
23 file last week. That obviously did not happen, and my
24 apologies to both Mr. Morrissey and the Court. My
25 expectation is that that will be on file today.

1 It is -- as Your Honor may recall, we were
2 operating or have been operating as ordinary course
3 professional counsel. Given the scope of our involvement,
4 we must at this point file a retention application to be
5 separately retained. And the scope is as it relates to
6 special regulatory counsel and then conflicts counsel as it
7 relates to this discrete issue with Celsius. I just wanted
8 the Court to be aware that -- and Mr. Morrissey to be aware
9 that that is forthcoming.

10 THE COURT: All right.

11 MR. MURPHY: Mike, I'll turn it over to you.

12 THE COURT: I assume nobody on the phone has any
13 objection to Mr. Murphy speaking on behalf of Voyager.

14 MR. MORRISSEY: Your Honor, Richard Morrissey for
15 the U.S. Trustee. I have no particular objection, but I
16 think it would be helpful for the Court to know, and I don't
17 know one way or another right now not having seen a
18 retention application, whether Paul Hastings has represented
19 any entity or individual in connection with Celsius. I just
20 want to make sure that there's conflict issue going in
21 before we hear the argument. Thank you.

22 MR. MURPHY: Yeah. The retention application will
23 show that Paul Hastings represents certain individuals in
24 the C Suite I guess is how I'll say it as it relates to
25 ongoing investigations and civil litigation matters

1 unrelated to this matter.

2 MR. MORRISSEY: Now, just to be clear, and I mean
3 to address Your Honor but addressing Mr. Murphy, the C --
4 this is the C Suite of Celsius?

5 MR. MURPHY: That's right.

6 MR. MORRISSEY: Okay. The U.S. Trustee can't take
7 a position on that, you know, not having seen the
8 explanation, but it certainly is a concern.

9 MR. MURPHY: Understood and happy to discuss
10 further once we get the application on file.

11 THE COURT: Mr. Hurley, were you about to say
12 something?

13 MR. HURLEY: Good morning, Your Honor. Mitch
14 Hurley with Akin Gump Strauss Hauer and Feld. I wasn't -- I
15 guess I was going to wait until Your Honor was ready for me,
16 but I am ready to proceed whenever you want me to.

17 THE COURT: Let me just ask as a preliminary
18 matter. Do you both agree that any preference claims
19 against Voyager here would relate to transfers that pre-
20 dated Voyager's bankruptcy case and therefore would be
21 unsecured claims in the Voyager case?

22 MR. HURLEY: So Celsius filed its bankruptcy case
23 about a week after Voyager's bankruptcy petition was filed.
24 It's -- I guess it's at least conceivable that a withdrawal
25 could've happened during the period after Voyager's petition

1 was filed and before Celsius' was filed. I confess I don't
2 have that information at my fingertips. But to the extent
3 the withdrawals and the transfers were prior to Voyager
4 petition being filed, I would agree, Your Honor.

5 THE COURT: Thank you. I looked at your -- the
6 declarations you submitted in that regard and I think they
7 were all before the Voyager filing date, but I could be
8 wrong.

9 MR. WHALEN: Yes, Your Honor. Michael Whalen from
10 Paul Hastings on behalf of Voyager. We would take that
11 position, and that's our understanding of the timing as
12 well.

13 THE COURT: So we're talking about a potential
14 \$5.9 million unsecured claim as well as I guess under 502(d)
15 an issue as to about -- potential issue as to about 1.1
16 million or so of items that remain with Celsius. Is that
17 correct?

18 MR. WHALEN: The total amount of the claim in the
19 90-day preference period, Your Honor, we understand is 7.7
20 million, but your numbers are obviously approximately right.

21 THE COURT: Can somebody from Paul Hastings help
22 me out? I thought I saw it was 5.9 that was withdrawn
23 because the total account was more like \$7 million if I got
24 the numbers wrong.

25 MR. MURPHY: Your Honor, we have a somewhat

1 different accounting internally, and it's our view on the
2 Voyager side that we would have to, you know, rectify that
3 if a claim is filed, but those numbers are approximately
4 right in the realm of 7.7. There's some uncertainty as to
5 how Celsius is treating those figures from our end, which is
6 understandable. We haven't seen their books and records,
7 they haven't seen ours, but we do contend that there's about
8 1.1 million still caught, for lack of a better word, on
9 Celsius' platform.

10 The remainder of any assets have made it into
11 Voyager's possession. That 1.1 million is in what's called
12 a withhold account, and it's our understanding that it's
13 Celsius' position that we have right and title over those
14 funds, but there is 1.1 million that's sort of in a little
15 bit of a limbo.

16 THE COURT: All right. And in your papers on
17 behalf of Voyager, Mr. Murphy, you've argued that any such
18 claim would be a huge portion of Class 4A, but aren't the
19 recoveries for Class 4A under the pending plan calculated by
20 reference to the larger pool that includes other types of
21 customer claims?

22 MR. WHALEN: This is Michael Whalen again, Your
23 Honor. Yes, and that is a point that we would like to
24 clarify. It is true we believe, and we don't believe that
25 Celsius has contested this, that their claim would fall into

1 Class 4A. And yes, they will be treated in the aggregate
2 with Class 3, the account holder claims. But the point that
3 we were trying to make is that they will constitute a large
4 portion of a class that could be subject to disparate
5 treatment. They are not under the plan. We don't
6 anticipate that that will be the case.

7 And we certainly don't think that will happen, but
8 it -- based on the negotiations and the understanding of the
9 relative creditor classes when this plan was formed, it was
10 a Class 4A that had about \$14 million in claims, and now
11 that's going to go up to 21 and change. So that was the
12 point that we were trying to make. I think our overriding
13 point is that while that is a huge portion of Class 4A and
14 should be considered, there are other factors that go into
15 the prejudice equation as well. So that's one piece of the
16 pie on prejudice.

17 THE COURT: But in terms of what you need to do to
18 make distributions and things like that, that's a drop in
19 the bucket, isn't it?

20 MR. WHALEN: It is a small amount relative to the
21 Class 3 size, but we think a law in the Southern District
22 and cases from Your Honor as well express the notion that
23 prejudice is not reduceable merely to the size of the claim,
24 and that there are other considerations, such as the
25 expectations of Creditors that did file by the bar date

1 that's also relevant. But yes, Your Honor.

2 THE COURT: Is there any other evidence on the
3 issues here that the parties think they need to gather and
4 to present to me, or that they would like to gather and
5 present to me?

6 MR. AZMAN: Your Honor, it's Darren Azman from
7 McDermott Will and Emery from the Committee. We would like
8 to cross all three of the declarants that submitted
9 declarations in support of the motion, but that's the only
10 additional evidence that we would like to introduce.

11 THE COURT: Okay. How about on behalf of the
12 Debtors or on behalf of Celsius?

13 MR. HURLEY: Not on behalf of Celsius, Your Honor.

14 MR. MURPHY: The Debtor -- Your Honor, with
15 respect to the Debtors, I think it's our position that
16 Celsius did not carry their burden to establish either form
17 of relief, but we'll be attentive to the cross and would
18 reserve our rights to participate in the cross, but we'll
19 allow the Committee to take the lead there.

20 THE COURT: All right. Well before I ask my own
21 questions about the underlying issues, maybe we should get
22 the evidentiary record set. And so is it your intent to
23 offer the declarations into evidence, Mr. Hurley?

24 MR. HURLEY: It is, Your Honor.

25 THE COURT: All right. Then maybe we should do

1 that one by one, and we should hear the cross-examinations.

2 MR. HURLEY: Okay. So there are two fact witness
3 declarations, Mr. Bixler and Mr. Ferraro. I also put in a
4 declaration. I'm not sure if I correctly understood that
5 McDermott -- that the UCC counsel also wants to cross-
6 examine me, but why don't we start with the fact witnesses?
7 So Chris Ferraro is the acting CEO of Celsius and submitted
8 a declaration, and Mr. Ferraro is available and on this case
9 for cross-examination. And Your Honor, we would offer his
10 declaration into evidence.

11 THE COURT: Let's start with does anybody object
12 to the admission of the declaration into evidence? All
13 right. The declaration is admitted into evidence. Is there
14 anybody other than the Committee who wishes to cross-examine
15 Mr. Ferraro? All right. Mr. Ferraro, I'm going to let the
16 Committee cross-examine you. Do you understand that the
17 answers that you give to their questions are to be given by
18 you under oath. And do you swear that the testimony you're
19 about to give is the truth, the whole truth, and nothing but
20 the truth? Mr. Ferraro, are you there? Is he on a speaking
21 line? Is he muted?

22 MR. FERRARO: -- mute. Can you hear me, Your
23 Honor?

24 THE COURT: I can now, yes. I couldn't before.

25 MR. FERRARO: Sorry. I'm learning the Court

1 Solutions site. I apologize.

2 THE COURT: No problem. Do you swear that the
3 answers to the questions you're about to give will be the
4 truth, the whole truth, and nothing but the truth, so help
5 you God?

6 MR. FERRARO: Yes, I do, Your Honor.

7 THE COURT: All right.

8 MR. HURLEY: Your Honor, before we begin, it's
9 Mitch Hurley again. My partner Dean Chapman is on the line,
10 and Mr. Chapman is going to handle the cross, objections,
11 and any redirect if necessary with the Court's permission.

12 THE COURT: Very good.

13 MR. CHAPMAN: Good morning, Mr. --

14 THE COURT: Go ahead.

15 MR. CHAPMAN: Thank you, Your Honor.

16 CROSS-EXAMINATION OF CHRIS FERRARO

17 BY MR. CHAPMAN:

18 Q Good morning, Mr. Ferraro.

19 A Good morning.

20 Q In Paragraph 8 of your declaration, you make a
21 conclusion that the bar date notice should've been provided
22 to Celsius US and Celsius EU instead of Celsius UK Is that
23 right?

24 A Yes, sir.

25 Q And in Paragraphs 6 and 7, you acknowledge that the bar

1 date notice was sent to Celsius UK, but you say that it was
2 an out-of-date address. That's right?

3 A Yes, sir.

4 Q When did Celsius UK move out of that address?

5 A On March 20, 2020 we filed the change of registered
6 address to 1 Bartholomew Lane, London.

7 Q And is that when -- sorry, was there more there, Mr.
8 Ferraro?

9 A No.

10 Q When did Celsius completely vacate that property?

11 A To my understanding right around that time. I wasn't
12 with the company at that time.

13 Q Okay. Can you tell me about the relationship between
14 Celsius US, Celsius EU, and Celsius UK?

15 A Yeah. The parent company would be UK and subsidiaries
16 US and EU.

17 Q And at the time that the bar date notice was sent to
18 what you described as the wrong address, and that was around
19 September 23, 2022, did Celsius US have any employees or
20 agents or any contractors who also performed functions for
21 either Celsius EU or Celsius UK?

22 A I don't know the answer to that, sir. I mean, we work
23 across -- we have a pool of employees that work across the
24 EU entities.

25 Q Okay. So it wouldn't surprise you if there were a

1 number of employees at Celsius, you know, the global
2 organization, that worked across Celsius U.S., Celsius EU,
3 and UK? That wouldn't surprise you?

4	A	No, sir.
---	---	----------

5	Q	Okay.
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6 A That wouldn't.

7 Q Do you know if there are any shared officers or
8 directors between those three entities?

9 A I don't have that in front of me. I apologize.

10 Q Okay, but that's possible?

11	A	Yes, it's possible.
----	---	---------------------

12 Q Okay. What do you believe is the correct address that
13 Voyager should've mailed the bar date notice to?

14	A	Our address in Hoboken, sir.
----	---	------------------------------

15 Q And how would Voyager have known that this was the
16 correct address?

17 A Well, as part of the addendum, you know, part of that
18 was assigning the rights to Celsius US from Celsius UK. So
19 I would say disclosure and execution of the addendum would
20 raise that kind of knowledge. Our address is listed on the
21 website.

22	Q	Okay.
----	---	-------

23	A	Our Hoboken address.
----	---	----------------------

24 Q You are referring to the assignment agreement. Is that
25 correct?

1 A Yes, sir.

2 Q Is there any address that's -- to your knowledge that's
3 -- do you have that assignment agreement in front of you, by
4 the way?

5 A I do not have it in front of me. I did read through
6 it, but it's not in front of me.

7 Q Okay. Is there an address anywhere in that agreement?

8 A Not that I remember offhand.

9 Q Okay. I'll represent to you and the Court that there
10 is no address in the assignment agreement.

11 MR. CHAPMAN: And I believe that the Debtor has
12 uploaded a revised declaration shortly before the hearing
13 that has the unredacted versions of those agreements, Your
14 Honor. So you should have those in full in front of you.

15 THE COURT: Let me just ask Celsius' counsel do
16 you agree that the assignment agreement doesn't have a
17 revised address in it?

18 MR. HURLEY: Your Honor, this is Mitch Hurley.
19 The assignment agreement references the terms of use, and
20 the terms of use include the address that was just
21 referenced by the witness. But the assignment agreement
22 does not expressly state that address within the text of the
23 assignment agreement.

24 THE COURT: Okay.

25 BY MR. CHAPMAN:

1 Q Mr. Ferraro, by referencing the terms of the use in the
2 assignment agreements --

3 MR. CHAPMAN: You know what, Your Honor? I'll
4 save this for argument later. I don't think it's
5 appropriate for the witness right now.

6 BY MR. CHAPMAN:

7 Q Mr. Ferraro, in Paragraph 9 of your declaration, you
8 say that to the best of your knowledge no Celsius agent or
9 employee ever received the notice of the bar date in
10 Voyager's bankruptcy. How did you make that determination?

11 A I checked in with the senior operations director who
12 handles kind of overseas mail and confirmed that there is no
13 record of any employee receiving such notice.

14 Q Okay. And did that individual speak with every
15 employee?

16 A That individual did not speak with every employee of
17 the company, no.

18 Q Do you know how many individuals that person spoke to?

19 A No, I didn't -- no, sir.

20 Q And do you know which individuals -- you know, who --
21 anyone that that person spoke to?

22 A Usually that person monitors the mailboxes. And there
23 is individuals that go and check the mail, and screen the
24 mail, and then kind of delegate the mail across the
25 organization. So this would've been caught in the normal

1 processes, sir.

2 Q Okay. Who is responsible for preparing the list of 90-
3 day transfers in the schedules that Celsius filed?

4 A In our statements and schedules, sir?

5 Q Yes. Who was responsible for preparing specifically
6 the 90-day transfers that were in the schedules and
7 statements?

8 A I can't speak -- yeah, sorry for talking over. I can't
9 speak specifically to who's responsible for that. It was a
10 collaboration between the internal team at Celsius and
11 Alvarez and Marsal led by Holden Bixler on that side with A
12 and M. This was --

13 Q Do you -- at --

14 A -- quite a big activity for us. We really had to
15 leverage across the entire organization starting really
16 before the petition and going all the way through when we
17 filed in October.

18 Q Oh, I imagine it was quite an undertaking. Did outside
19 counsel to Celsius have any involvement in preparing or
20 viewing the schedules?

21 A They were part of the review discussions.

22 Q And when you say they, what law firm are you referring
23 to?

24 A At -- it would've been Kirkland and Ellis.

25 Q Okay. So Kirkland was responsible for reviewing the

1 list of the 90-day transfers?

2 A I'm not sure, sir, the (indiscernible) responsibility.

3 We worked predominantly with A and M on the exercise. I

4 know that they were present in discussions.

5 Q Okay. But to the extent that outside counsel would've

6 been involved, it would've been Kirkland it sounds like. Is

7 that right?

8 A I don't want to speculate. They're involved in kind of

9 the (indiscernible) on all legal items in the case.

10 Obviously this one's a little bit different as we identified

11 and engaged with Akin. So...

12 Q Okay. And you're aware that the list of 90-day

13 transfers included all the Voyager withdrawals that are at

14 issue in this dispute? Is that right?

15 A Yeah. To my understanding, yes. When we filed the

16 statements and schedules, it was identified, yes.

17 Q Okay. So any of the professionals, whether Kirkland, A

18 and M, any of the professionals that would've been involved

19 in reviewing the schedules and statements would've been

20 aware that those transactions with Voyager were included on

21 the 90-day transfer schedule. Is that right?

22 MAN: Objection, foundation.

23 THE COURT: Overruled. Go ahead.

24 BY MR. CHAPMAN:

25 A I don't want to speculate on what they did or did not

1 know. I will say this. There's over 30,000 pages that we
2 produced and 3 million lines of data, and we have 600,000
3 Creditors.

4 Q Do you know what the purpose of the 90-day transfer
5 schedule is?

6 A My understanding is to look at withdrawals within 90
7 days and transfers within 90 days to look at preferential
8 claims, preferential transfers and claims.

9 Q So if you see a particular person on that 90-day
10 transfer schedule, what does that mean to you?

11 A I'm not the person -- I have many jobs in the company.
12 Looking at the 90-day transfers line by line is not one of
13 them, sir.

14 Q Oh, I'm asking more generically. If you were to see
15 somebody on the 90-day transfer schedule -- I think you
16 actually already answered it. You indicated previously that
17 it would -- the purpose of the 90-day transfer schedule is
18 to identify potential preference actions. Am I getting your
19 testimony correct on that?

20 A That's my understanding, sir.

21 Q Okay. So if you saw a particular person that 90-day
22 transfer schedule, wouldn't -- would that indicate to you
23 that there's a potential preference claim against that
24 person?

25 A I -- it would indicate to me that it should be

1 reviewed, yes.

2 Q Okay. Did someone at Celsius review the schedules and
3 statements, and in particular the 90-day transfer schedule
4 before it was filed?

5 A I can't speak to the review of individual statements.
6 As I mentioned, these are very voluminous. I don't think
7 that it would be reasonable to think that all 3 million
8 lines of data were reviewed and analyzed one by one. I
9 think there's processes and controls we have in place to
10 make sure that the statement schedules overall are
11 reasonable.

12 Q Okay. So even though they are signed under penalty of
13 perjury, you're saying that it's possible that no one had
14 reviewed the 90-day transfer schedule line by line.

15 A I don't think that --

16 MAN: Objection.

17 BY MR. CHAPMAN:

18 A -- we're assigning -- sorry. I don't believe that
19 individuals reviewed every line, every text of every single
20 statement and schedule. They were produced and reviewed as
21 I mentioned.

22 Q Okay. If Celsius wanted to further investigate the 90-
23 day transfers, would the company have been able to do that
24 before the Voyager bar date?

25 A Well, sir, we filed the statements and schedules on

1 October 5th. My understanding is the bar date was on
2 October 3rd.

3 Q Yes, but I -- when did you begin -- when did the
4 company AM begin preparing the schedules?

5 A As I mentioned, we started kind of mobilizing for the
6 effort shortly before the petition date knowing it was a big
7 lift.

8 Q Right. So is it fair to say that most if not all of
9 the work was completed before the bar date in this case?

10 A No, sir. We had a lot of transfers, including from
11 insiders, that were being reviewed and rereviewed and
12 checked along with other items of statements and schedules.
13 We asked for two extensions and received two extensions from
14 the court. We continued to work on populating really all
15 the way through kind of the timeline.

16 Q Okay. So again I'll ask if Celsius had wanted to
17 further investigate the 90-day transfers, would the company
18 have been able to do that before the Voyager bar date?

19 A We were still working on our statements and schedules,
20 sir, and reviewing those. So I think it would be hard to
21 identify this before we actually finalized the statements
22 and schedules. It's a little bit of a chicken-before-the-
23 egg problem.

24 Q Okay. So was anyone at either Celsius or any of
25 Celsius' professionals aware of the Voyager withdrawals from

1 Celsius before the bar date?

2 MAN: Objection, foundation.

3 THE COURT: Overruled.

4 BY MR. CHAPMAN:

5 A I don't know specifically, but to my understanding this
6 wasn't really identified until early November with regards
7 to the bar date and the claim.

8 Q Well, just to be clear, you're aware that the schedules
9 were filed on October 5th and the bar date in this case was
10 October 3rd. Are you saying that in that 48-hour period
11 that's when the Voyager transactions were discovered?

12 A No, I said in early November, sir.

13 Q But they were included in the schedules that were
14 filed, right?

15 A Yeah. I'm talking with relation to the bar date.

16 Q Okay. So I think what I'm hearing is that although
17 technically possible, it would've been difficult for Celsius
18 to have further investigated the Voyager withdrawals before
19 the Voyager bar date. Is that right?

20 A It's truly a needle in a haystack. You know, 3 million
21 rows of data, 600,000 creditors.

22 Q So -- oh, please continue.

23 A No, that's it.

24 Q So even if Celsius had received a bar date notice from
25 Voyager at what you believe is the correct address, we

1 would've been in the same position we are today. Celsius
2 still would not have been able to get a proof of claim on
3 file. Is that right?

4 A No, that would've connected the dots for us receiving
5 the notice in my opinion.

6 Q Were you aware of Voyager's bankruptcy filing prior to
7 the bar date?

8 A Yes, I was, sir.

9 Q When did you first become aware that Voyager had filed
10 for bankruptcy?

11 A Right around when we were filing. You know, I
12 remember, you know, hearing and reading about the case in
13 the run-up to our petition.

14 Q Have you ever been involved in a bankruptcy filing
15 before Celsius?

16 A No, sir.

17 Q And in your discussions with professionals, did you
18 come to learn that there are bar dates that are established
19 in bankruptcy cases?

20 A I have come to learn that, sir.

21 Q Okay.

22 MR. CHAPMAN: Your Honor, I have no more
23 questions.

24 THE COURT: All right. Anybody else wish -- does
25 anyone else wish to cross-examine?

1 MR. WHALEN: Nothing from Voyager, Your Honor.

2 THE COURT: I'm sorry. You do or you don't, Mr.

3 --

4 MR. WHALEN: Nothing from Voyager, Your Honor.

5 Thank you. We do not.

6 THE COURT: I have some follow-up questions for
7 the witness of my own. Mr. Ferraro, in response to the
8 questions about whether Celsius could have identified the
9 Voyager information before October 3rd, you on several
10 occasions talked about how long it took to do the overall
11 schedules, but you didn't actually have to do the overall
12 schedules just to get the Voyager information, did you?

13 THE WITNESS: No, we didn't. But we were not on
14 the lookout for anything that was specific of Voyager, Your
15 Honor.

16 THE COURT: But in terms of identifying just the
17 Voyager information, I presume that meant only looking at
18 the Voyager accounts. It probably took no more than five
19 minutes, did it?

20 THE WITNESS: Right, but we would've needed to
21 know to look at the Voyager account specifically in relation
22 to the bar date. And that's what we didn't connect.

23 THE COURT: In the Celsius case when Kirkland and
24 Ellis moved -- or excuse me, when Celsius moved for
25 permission to retain Kirkland and Ellis, there was an

1 objection by a customer that was filed on July 28th that
2 alleged that there was a conflict because Kirkland and Ellis
3 also represented Voyager, and that Voyager had had dealings
4 with Celsius and was a customer of Celsius. Were you aware
5 of that objection?

6 THE WITNESS: I had just been the CFO of the
7 company. I'm aware broadly of the conflict or the
8 perception of a conflict. I did not read the objection,
9 Your Honor.

10 THE COURT: All right. I presume somebody at
11 Celsius had to make the decision as to whether that did or
12 did not constitute a conflict on behalf of Kirkland and
13 Ellis. Who made that decision?

14 THE WITNESS: I wasn't party to that discussion,
15 Your Honor. I do not know.

16 THE COURT: You don't know who made that decision.

17 THE WITNESS: No, sir.

18 THE COURT: So you don't also know what
19 information that person or persons might have had about
20 Voyager's dealings with Celsius.

21 THE WITNESS: No, sir. I was not in this role at
22 that time. I do not have that information.

23 THE COURT: Kirkland and Ellis filed a declaration
24 at the end of August in response to this objection that said
25 that Voyager had been a customer of Celsius, and that

1 Voyager had withdrawn most of what had been in its accounts.
2 Do you have any knowledge of where Kirkland got that
3 information?

4 THE WITNESS: I do not, sir. Kirkland and Alvarez
5 had access to voluminous amounts of data obviously in the
6 case. I think it's important to note that, you know, we did
7 not connect the dots, but our advisors did not connect the
8 dots either, Your Honor.

9 THE COURT: Well, do you know who at Celsius, if
10 anybody, provided that information to Kirkland?

11 THE WITNESS: I do not know on that specific
12 declaration. I do not know who provided that information,
13 Your Honor.

14 THE COURT: Well, if you don't even know who
15 provided the information or who made the decision about
16 whether this constituted a conflict, how do you know whether
17 or anybody at Celsius connected the dots?

18 THE WITNESS: Well, because it wasn't until early
19 November when this was kind of brought up to my attention as
20 well as to the special committee's attention. So I'm basing
21 my understanding on that, Your Honor.

22 THE COURT: Who brought it to your attention?

23 THE WITNESS: I can't remember specifically. I
24 remember having a conversation with -- I think it was our
25 general counsel who brought it to my attention. I might've

1 been also listening in on meetings with the special
2 committee. I can't remember. It was likely one of those
3 two.

4 THE COURT: It was either the general counsel or
5 who?

6 THE WITNESS: Or me listening into the special
7 committee meetings of the board. And this would've been
8 likely discussed there. I can't remember where I first
9 heard this.

10 THE COURT: Okay. How did they say that the issue
11 had come to their attention?

12 THE WITNESS: Your Honor, I do not have that
13 information. I do not recall.

14 THE COURT: You don't actually know when -- if
15 somebody asked you to look at it or brought it up to you,
16 you don't actually know when that person learned of the
17 issue or how that person learned of the issue. Is that
18 correct?

19 THE WITNESS: No. I only remember that it was,
20 you know, early November.

21 THE COURT: Okay. That's when they mentioned it
22 to you, but when they actually learned of the issue, you
23 have no idea. Is that correct?

24 THE WITNESS: Yeah, I don't know, Your Honor.

25 THE COURT: All right. Celsius filed papers on

1 September 16th in its case asking for an additional
2 extension of time to file its schedules, but indicated in
3 that motion that it had compiled the schedules. It just
4 couldn't put them in final form until Judge Glenn had ruled
5 on the issue of what information would be disclosed. Was
6 that your understanding at the time, that the schedules had
7 --

8 THE WITNESS: Yes.

9 THE COURT: -- otherwise been compiled by
10 September 16th?

11 THE WITNESS: Compiled but not finalized, Your
12 Honor. We were still working on items, you know, especially
13 reviewing insider transactions.

14 THE COURT: So the final formatting was done, and
15 documents were filed on the 5th, but the information was
16 compiled sometime before that, right?

17 THE WITNESS: We started pulling the information,
18 yeah, a month before the filing date on October 5th.

19 THE COURT: When Celsius filed and the Voyager
20 case had filed, was somebody -- was anybody -- to your
21 knowledge, was anybody at Celsius tasked with monitoring the
22 Voyager docket or developments that might also be relevant
23 to Celsius?

24 THE WITNESS: No one that I know of, Your Honor.

25 THE COURT: Do you know if the general counsel of

1 Celsius did so?

2 THE WITNESS: Not that I know of, Your Honor.

3 THE COURT: Who is the general counsel of Celsius?

4 THE WITNESS: Ron Deutsch.

5 THE COURT: And how big a staff is there in the
6 general counsel's office?

7 THE WITNESS: I think there's around five in-house
8 lawyers on the team.

9 THE COURT: Okay. Have you yourself asked the
10 general counsel if the general counsel knew of these issues
11 prior to the Voyager bar date?

12 THE WITNESS: In my conversations leading up to my
13 declaration as well as preparing for today, I did talk with
14 the general counsel. And I also heard that he kind of
15 became aware of this in early November. I don't know
16 specifically the date or how he was made aware.

17 THE COURT: Okay. And your counsel has said that
18 -- has cited to your declaration and others, which say that
19 you didn't receive the -- or you don't have record of
20 receiving the bar date notice. I didn't actually see any
21 statement in your declaration that you personally were
22 actually unaware of the Voyager bar date. Were you unaware
23 of it?

24 THE WITNESS: Yeah, I was unaware of the Voyager
25 bar date.

1 THE COURT: And you testified about what you did
2 to check with the mail departments about whether the
3 remembered the bar date notice having been received. What
4 did you do by way of canvassing people within Celsius, if
5 you did anything, to determine whether people inside Celsius
6 knew of the bar date?

7 THE WITNESS: In talking with the general counsel
8 and in talking with the operations lead as I discussed
9 before. I can't remember specifically who else I canvassed
10 to understand, but if the operations lead didn't have record
11 of the mail, that's kind of where it starts and stops, Your
12 Honor. We were obviously busy compiling our statements and
13 schedules. We've had a lot of reduction in staffing.
14 People are doing multiple jobs, so I don't think that there
15 was internal knowledge in following of the Voyager case.

16 THE COURT: As to the mail department records,
17 does the mail -- do the people there actually keep logs of
18 mail that's coming in?

19 THE WITNESS: I don't know of any formal logs that
20 are kept, Your Honor.

21 THE COURT: Do you know what the volume of mail
22 that comes in on a given day is?

23 THE WITNESS: No, I do not.

24 THE COURT: Do you have any rough sense of it? Is
25 it more than 1,000 items?

1 THE WITNESS: No, Your Honor, I do not.

2 THE COURT: So it could be more than 1,000 items?

3 THE WITNESS: It could be one, it could be 1,000.

4 I do not know.

5 THE COURT: It could be 10,000 so far as you
6 know?'

7 THE WITNESS: I wouldn't want to venture to guess,
8 Your Honor. I could look into this, but I do not know.

9 THE COURT: So when you talked to the people in
10 the -- who oversee the mail, essentially what you're asking
11 them is whether they remembered seeing something from --
12 seeing an envelope from Voyager out of however many thousand
13 pieces of mail Celsius receives. Is that what it comes down
14 to?

15 THE WITNESS: I don't know how they track the
16 mail, Your Honor, so I was just asking whether or not they
17 knew of any bar date received.

18 THE COURT: Okay. And when Celsius changed its
19 address in March, did it send a change of address notice to
20 Voyager?

21 THE WITNESS: I do not know that -- the answer to
22 that, Your Honor.

23 THE COURT: The assignment agreement, the initial
24 contract before the assignment agreement, the initial
25 contract with Voyager had a notice address in it, didn't it?

1 THE WITNESS: It did, Your Honor, yeah. 35 Gray
2 Street.

3 THE COURT: Did the assignment agreement amend
4 that notice address?

5 THE WITNESS: To my knowledge it did not
6 explicitly state the notice address. It referred to terms
7 and service which had the address for the U.S. entity is my
8 understanding, Your Honor.

9 THE COURT: Okay. When Celsius changed its
10 address in the UK, did it do something in the UK that's the
11 equivalent of what we would do here by way of giving the
12 post office a forwarding address?

13 THE WITNESS: Absolutely, Your Honor. There's a
14 thing called in the UK the company's house, which is a
15 public record about companies', including Celsius, address.
16 It is there for the enjoyment of anybody who wants to go and
17 look it up.

18 THE COURT: Well, my -- I'm not sure that answered
19 my question. My question was more with the postal
20 authorities, whether they're given notice of your new
21 address so that if any mail comes in at the old address they
22 will forward it to the new address.

23 THE WITNESS: We have mail forwarding at the 1
24 Bartholomew address. I do not know of any mail forwarding
25 at the 35 Gray Street address.

1 THE COURT: And why wouldn't Celsius have put in a
2 mail forwarding address at the -- from the old address to
3 make sure that it continued to receive any mail that might
4 be sent there?

5 THE WITNESS: I don't know, Your Honor. That was
6 over two years ago. I don't have an answer to that.

7 THE COURT: Okay. Do you know one way or the
8 other whether there was a forwarding address given to the
9 postal authorities?

10 THE WITNESS: I do not, Your Honor.

11 THE COURT: Okay. All right. Is there any other
12 questions that anybody wishes to ask of Mr. Ferraro?

13 MR. CHAPMAN: Your Honor, this is Dean Chapman.
14 Can I ask just a quick redirect question of the witness?

15 THE COURT: Yep. Yes.

16 BY MR. CHAPMAN:

17 Q And again, good morning, Mr. Ferraro. Dean Chapman,
18 Akin Gump Strauss Hauer and Feld. On this question of mail
19 forwarding, can you just explain to the Court the different
20 addresses associated with Celsius in the UK?

21 A Yeah. The address and the dates?

22 Q Sure.

23 A Okay. On February 9, 2018, we incorporated the entity,
24 and the registered address was 35 Gray Street in London. On
25 March 20, 2020, we filed a change of registered address for

1 1 Bartholomew Lane, London. On May 11, 2021, we changed --
2 filed a change of register. Again on May 11, 2021, we filed
3 a change of the registered address to 77-79 New Cavendish
4 Street, London, which is our current address.

5 Q Got it. So the address to which Voyager prefers to
6 have sent notice was the address that Celsius occupied in
7 London two addresses ago. Is that correct?

8 A That's correct.

9 Q Okay. One other question, Mr. Ferraro. You testified
10 that you didn't become aware of the potential claim against
11 Voyager until early November of 2022. Is that right?

12 A Yes. That's what I recall.

13 Q And can you explain to the Court what steps you took
14 upon becoming aware of the potential claim?

15 A Well, we engaged Akin Gump to handle this matter.

16 Q Anything else?

17 A Nothing else off of memory. I remember having that
18 conversation and talking about the conflict that Kirkland
19 has and talking with the GC Ron Deutsch about effectively
20 engaging with Akin Gump to handle this matter.

21 Q Do you remember how much time passed between becoming
22 aware of the potential claim (indiscernible) of Akin Gump?

23 A I recall a very little amount of time. I don't know
24 exactly how much. I think this all happened pretty quick in
25 early to mid-November.

1 Q Okay. Nothing further. Thank you.

2 THE COURT: Okay. Thank you, Mr. Ferraro. You
3 are excused. Do you have another witness, Mr. Hurley?

4 MR. HURLEY: I do, Your Honor. Thank you. Again,
5 Mitch Hurley with Akin Gump for the record. The Celsius'
6 next witness is Holden Bixler, the managing director at
7 Alvarez and Marsal. And I believe Mr. Bixler is on the line
8 and available for cross-examination, and we would therefore
9 offer his declaration into evidence.

10 THE COURT: Any objections to the admission of Mr.
11 Bixler's declaration into evidence? All right. It's
12 admitted into evidence. I understand that the Committee
13 wishes to cross-examine?

14 MR. AZMAN: Yes, Your Honor. It's Darren Azman
15 again from McDermott for the Committee. Did you need to
16 swear Mr. Bixler? Maybe I missed it. Sorry.

17 THE COURT: Hang on one second. Just making a
18 note to myself. Thank you. I'm so absorbed. How could I
19 have forgotten that.

20 Mr. Bixler, do you swear that the testimony you
21 are about to give will be the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 MR. BIXLER: I do.

24 CROSS-EXAMINATION OF HOLDEN BIXLER

25 BY MR. AZMAN:

1 Q Good almost afternoon, Mr. Bixler. In Paragraph 13 of
2 your declaration, you see that four weeks -- and I'm just
3 quoting here, four weeks after the filing of the schedules
4 and statements, A and M was asked about Voyager's
5 withdrawals of crypto assets in the 90 days prior to the
6 filing of Celsius' Chapter 11 bankruptcy petition. I want
7 to focus on the three words that I emphasized, "A and M was
8 asked." Who specifically asked A and M about this?

9 A Kirkland and Ellis sent an email to us on November 2nd
10 I believe asking for a summary of the various places in
11 which Voyager appeared in the statements and schedules.

12 Q When was the first time that anyone at A and M
13 discussed Voyager's withdrawals either internally among A
14 and M personnel or externally with anyone else?

15 A It would've been --

16 MR. HURLEY: Objection.

17 THE COURT: I'm sorry. What was the objection?

18 MR. HURLEY: Foundation.

19 THE COURT: Overruled.

20 BY MR. AZMAN:

21 A It would've been right around that time, around
22 November 2nd.

23 Q So no one ever at Celsius that you're aware of or at A
24 and M ever discussed Voyager's withdrawals before November.

25 A Not that I'm aware of.

1 Q Okay. But you're aware of the supplemental declaration
2 from Kirkland and Ellis that references the Voyager
3 withdrawals, right?

4 A I am not.

5 Q Okay. Was A and M generally aware of the Voyager
6 bankruptcy filing at any time prior to the Voyager bar date?

7 A Yeah, we were. We were aware of the Voyager filing
8 coming into our engagement in the case.

9 Q Okay. It sounds like it took quite a lot of time for
10 your team to put together the schedules from Celsius. Is
11 that right?

12 A That is absolutely correct, yeah.

13 Q When exactly did you start preparing the schedules?

14 A So some of our initial data requests would've gone out
15 pre-petition. So you know, maybe early July.

16 Q And are you familiar with the 90-day transfer section
17 the schedules?

18 A Yes, I am.

19 Q And that identifies a number of withdrawals that were
20 made by Voyager during the 90-day pre-petition period. Is
21 that right?

22 A Correct.

23 Q Can you help me understand how exactly your team
24 compiled the list of 90-day transfers?

25 A I'll do my best. So Celsius maintains an internal log

1 of transfers, and we requested the data that would be
2 responsive to that question in the Statement of Financial
3 Affairs, SOFA 3, from the company. They provided us
4 initially with files containing approximately 25 and a half
5 million rows of transaction data within that period. And
6 then A and M kind of cleaned and formatted and aggregated
7 that information into what was ultimately reported in the
8 SOFA through a sort of iterative process. We got multiple
9 pools of the information, and then you know, ultimately
10 filed what's on the docket today.

11 Q Okay. How many different people at Celsius and A and M
12 would you say were involved in preparing the Celsius
13 schedules? Just roughly.

14 A It was a substantial team. On the A and M side, we
15 probably had four or five folks involved in the statements
16 and schedules workstream. On the company's side, it
17 would've exceeded 10 or 15 in some capacity. Not all
18 directly related to the 90-day payments, but that's the, you
19 know, kind of broad statement schedule workstream team.

20 Q And you're aware that the Voyager bar date was October
21 3rd, right?

22 A Yes.

23 Q So several months before the bar date in this case,
24 your team prepared a schedule that identified the
25 withdrawals by Voyager that are issue in this dispute. Is

1 that right?

2 A I don't know. I can tell you that we got our initial
3 provision of this transaction history data on August 31st,
4 and then we subsequently received additional iterations of
5 this data all the way up through October 4th just before we
6 filed the statements and schedules.

7 Q Okay. When would you think that the Voyager
8 withdrawals first showed up in some form on the schedules
9 that were being prepared?

10 A I don't know. We had parties coming on and off of
11 those data sets through that. One of the reasons for the
12 iteration is, you know, sort of an ongoing cleaning and QC
13 process. So we -- the data sets were in flux throughout
14 that process. And I wouldn't know specifically with respect
15 to Voyager.

16 Q Okay. So you knew about the Voyager bankruptcy filing,
17 and -- strike that. Would you agree that at least weeks
18 before the bar date the Voyager withdrawals were in some
19 form included in the draft schedules that were being
20 prepared?

21 A Again, I don't know. It wasn't something that I looked
22 for specifically then, so I don't know at what point those
23 appeared in our data set.

24 Q Okay.

25 A They may have been in the very first data set, but I

1 just don't know the answer to that.

2 Q Okay. And so notwithstanding that these withdrawals
3 appeared at some point in the schedules that you were
4 preparing before the bar date in this case, and
5 notwithstanding that the A and M and Celsius teams were
6 aware of the Voyager bankruptcy filing, did anyone
7 prioritize looking at whether there might be preference
8 claims against Voyager?

9 A Not on the A and M team.

10 Q Why not?

11 A Well, at the time we -- our mandate was to prepare the
12 statements and schedules, which was sort an all-consuming
13 process. And we were solely focused on aggregating,
14 cleaning, and processing the data that the company was
15 providing in order to, you know, report as accurately as
16 possible. We didn't engage any analysis of the data at that
17 time. Leading up to the deadline for filing the statements
18 and schedules, the focus was solely on ensuring that we
19 prepared those in the most accurate form possible. Analysis
20 would typically follow.

21 Q In Paragraph 12 of your declaration, you say that other
22 than in GKA preference actions, Celsius had not undertaken
23 any generalized effort to identify potential preference
24 actions. Is that right?

25 A That's right.

1 Q What do you mean by generalized effort?

2 A I mean that at that point there'd been no workstream
3 stood up to conduct a preference analysis and evaluate, you
4 know, potential claims that may be -- potential preference
5 claims that may be contained within that 90-day payment
6 file.

7 Q Okay. If Celsius wanted to further investigate the 90-
8 day transfers, would A and M or Celsius have been able to do
9 that before the Voyager bar date?

10 A So I can tell you that the teams that were tasked with
11 preparing the statements and schedules during that time did
12 not have additional bandwidth. We were pretty maxed out
13 across the boards. So I don't really know what would've
14 happened had that request come across.

15 Q Okay. So even if Celsius had received a bar date
16 notice from Voyager at the correct address and A and M had
17 been asked to do this, it sounds like you guys wouldn't have
18 had the bandwidth to do it. Is that right?

19 A Again, I don't know. Maybe we could've brought
20 additional people on to address that issue. It's hard for
21 me to say what could've happened at that time.

22 Q Okay.

23 MR. AZMAN: Your Honor, I have no additional
24 questions.

25 THE COURT: Does anyone else wish to cross-examine

1 Mr. Bixler? I have some questions. Mr. Bixler, you said
2 that Kirkland and Ellis asked you to look at the Voyager
3 issues in November. Is that correct?

4 THE WITNESS: They sent an email on November 2nd
5 asking for detail on the places in which Voyager appeared in
6 Celsius' Statement of Financial Affairs and schedules of
7 assets and liabilities.

8 THE COURT: And who from Kirkland made that
9 request?

10 THE WITNESS: I don't recall offhand, though I
11 could check my email now if you'd like me to.

12 THE COURT: But you don't recall as you sit here
13 right now?

14 THE WITNESS: I don't, no.

15 THE COURT: All right. And to whom was the
16 request made? Just you or a broader group?

17 THE WITNESS: It would've come to the team, but
18 probably me. You know, me with a CC to my team.

19 THE COURT: Did Kirkland explain what had prompted
20 the request?

21 THE WITNESS: No. As I recall, it would've been a
22 very simple -- it was a very simple sort of one-liner email
23 saying can you please send a summary of, you know, the
24 places in which Voyager appears in statements and schedules.

25 THE COURT: What was it about that that alerted

1 you to the possibility that Celsius might have a preference
2 claim?

3 THE WITNESS: I don't know that that necessarily
4 did alert me to that fact. I think that when I saw the
5 summary, I did see that Voyager appeared in the section
6 where we were detailing the SOFA 3 information, the negative
7 payment information. So that probably would've signaled to
8 me, ah, there might be a preference claim here.

9 THE COURT: So knowing that voyager had received
10 withdrawals was enough to signal to you that there was a
11 possible preference claim?

12 THE WITNESS: A possible preference claim, yes,
13 though, you know, I haven't done a preference action in a
14 crypto case and don't have a full understanding of, you
15 know, what the kind of rules of the road are for those
16 withdrawals. But certainly potential seeing their -- that
17 summary of those payments in that -- you know, in that
18 document we provided to Kirkland would've signaled to me
19 that there was a potential preference claim.

20 THE COURT: When did you first learn that Voyager
21 had had accounts at Celsius?

22 THE WITNESS: I don't recall when I first -- I
23 certainly became aware in response to the email in November
24 when we sent the summary to Kirkland. I don't recall prior
25 to that when I became aware.

1 THE COURT: But do you know whether you had been
2 aware before that time that Voyager had accounts at Celsius?

3 THE WITNESS: I suspect I was aware before that
4 time Voyager had accounts at Celsius.

5 THE COURT: And why do you suspect that you knew
6 that?

7 THE WITNESS: I think I knew that there were
8 conflicts issues with Voyager and Celsius. And so that
9 probably signaled to me that there was a connection there,
10 but I don't really have a very specific recollection of
11 that.

12 THE COURT: How did you know that there were
13 conflicts issues?

14 THE WITNESS: I don't recall.

15 THE COURT: Do you recall when you knew that there
16 were conflicts issues?

17 THE WITNESS: No, I don't, Your Honor.

18 THE COURT: Do you know who was involved in
19 assessing those conflicts issues from the perspective of
20 Celsius?

21 THE WITNESS: No, I don't, Your Honor.

22 THE COURT: Do you have any knowledge as to what
23 information or issues were addressed by anybody on behalf of
24 Celsius in deciding whether there were conflicts issues that
25 -- and how they needed to be addressed?

1 THE WITNESS: No, I don't, Your Honor.

2 THE COURT: I had asked Mr. Ferraro, I assume you
3 were on the line, about the objection that was filed in July
4 and about the K and E declaration that was filed in August.
5 Do you have any knowledge of where Kirkland and Ellis got
6 the information that was disclosed in that objection
7 regarding the fact that Voyager had accounts at Celsius and
8 that Voyager had made withdrawals from those accounts?

9 THE WITNESS: Yeah, I heard your transaction with
10 Mr. Ferraro. I do not know where Kirkland got that detail,
11 Your Honor.

12 THE COURT: Were you aware of that declaration?

13 THE WITNESS: No, I was not.

14 THE COURT: And when you say you knew that there
15 were conflicts issues, do you know if that was at the time
16 of this declaration, or if it was later, or if it was
17 earlier? Do you know one way or the other?

18 THE WITNESS: No, I don't recall. I was sort of
19 vaguely aware of conflicts issues, you know, at some point
20 in the matter, but it wasn't something that was directly
21 related to any workstream I was on.

22 THE COURT: All right. You said Kirkland and
23 Ellis raised the issue in November about Voyager's accounts.
24 Did you think it was their responsibility to alert people at
25 Celsius if there was a potential preference claim?

1 THE WITNESS: I think that counsel would typically
2 take the lead on pursuing that sort of claim.

3 THE COURT: Okay. And is there any question in
4 your mind but that Kirkland and Ellis knew at the end of
5 August that Voyager had made withdrawals and that in the
6 Voyager case there was a bar date?

7 THE WITNESS: At the end of August?

8 THE COURT: Yeah.

9 THE WITNESS: I don't know. I don't know when
10 Kirkland and Ellis would've become aware of that
11 information.

12 THE COURT: Well, they're the same counsel for
13 Voyager and Celsius, so they knew about the Voyager bar
14 date, right?

15 THE WITNESS: I would assume so. As counsel for
16 those Debtors, I would assume they're aware of the bar date.

17 THE COURT: Okay. Have you spoken to anybody at
18 Celsius about communications they had with Kirkland and
19 Ellis about the Voyager accounts?

20 THE WITNESS: I have not.

21 THE COURT: So you don't know what information
22 other people at Celsius may have had from talking to
23 Kirkland and Ellis about potential claims against Voyager.

24 THE WITNESS: No, I don't.

25 THE COURT: Okay. All right. Thank you. That's

1 all I have.

2 MR. CHAPMAN: Briefly on redirect. Dean Chapman,
3 Akin Gump Strauss Hauer and Feld.

4 REDIRECT EXAMINATION OF HOLDEN BIXLER

5 BY MR. CHAPMAN:

6 Q Mr. Bixler, how many rows of data were in the
7 spreadsheet evidencing transfers in the 90 days prior to
8 Celsius' petition?

9 A So the filed 90-day payment schedule contained about 3
10 million rows. The source information for that, you know,
11 prior to aggregation was in excess of 25 million rows.

12 Q Got it. And of the 3 million rows that were included,
13 how many of those rows approximately involved transfers to
14 Voyager?

15 A I don't know offhand, but I can say it's, you know,
16 comfortably under 50 rows.

17 Q Under 50 rows out of approximately 3 million total?

18 A Yeah. I think that's right.

19 Q And how many different customers, individual customers,
20 would've been reflected in those 3 million rows?

21 A I don't know offhand.

22 Q Would the number be greater than 100,000?

23 A I don't know offhand. You know, the company has
24 600,000 customers, and I suspect many or most of them were
25 transacting in that window.

1 Q Okay. You were also asked at one point that you were
2 aware of the October 3rd bar date, correct?

3 A Yes.

4 Q And when did you become aware of that bar date?

5 A I don't know specifically. I think I became aware of
6 it certainly by, you know, early November when this issue
7 was raised. I don't know that I was aware of it in advance
8 of that.

9 Q Okay. Nothing further. Thank you.

10 THE COURT: Okay. Anything else?

11 MR. HURLEY: So Your Honor, the final declaration
12 that Celsius submitted in support of the motion is from me,
13 and we would offer that into evidence as well.

14 THE COURT: And I'll excuse Mr. Bixler and thank
15 him for his testimony. You're offering your declaration,
16 Mr. Hurley?

17 MR. HURLEY: Yes, Your Honor.

18 THE COURT: Is there any objection to the
19 admission of Mr. Hurley's declaration? Does anybody wish to
20 cross-examine?

21 MR. AZMAN: Yes, Your Honor. Darren Azman for the
22 Committee.

23 THE COURT: Okay. Please proceed.

24 MR. AZMAN: Your Honor, I'm mindful that Mr.
25 Hurley is counsel for Celsius, so I'm going to keep this

1 short and try to keep this narrow.

2 CROSS-EXAMINATION OF MITCH HURLEY

3 BY MR. AZMAN:

4 Q Mr. Hurley, in Paragraph 4 of your declaration, you
5 state that Akin was retained as conflicts counsel. Is that
6 right?

7 A That's correct.

8 Q When is the first time that someone at Celsius or
9 Kirkland mentioned anything to Akin about potentially
10 handling issues related to Voyager?

11 A I believe it was November 5th. It certainly was early
12 November.

13 Q Hmm. In Paragraph 4 of your declaration, you also say
14 that Akin investigated the Voyager transactions and
15 considered Celsius' potential claims. Is that right?

16 A Correct.

17 Q And you're aware that the 90-day transfer schedule that
18 was prepared well in advance of the Voyager bar date listed
19 these very transactions that are at issue, right?

20 A You're asking me if I'm aware of that now?

21 Q Yes.

22 A Certainly.

23 Q Okay. What additional investigation did you determine
24 -- strike that. What additional investigation did you do to
25 determine that Celsius had potential preference claims

1 against Voyager?

2 A I mean, I'm going to approach this very generally
3 mindful as you pointed out that I want to be careful around
4 attorney-client privilege. We coordinated with A and M with
5 respect to identifying timing of transfers and considered
6 what kinds of legal arguments would exist with respect to
7 potential claims, including based on the information that we
8 received about the timing of transfers.

9 Q Is the very existence of the 90-day transfers
10 sufficient to know that there is a potential preference
11 claim against someone who received transfers during that
12 period of time?

13 A Well, as the objectors point out in their papers,
14 there's a legal issue that has to be confronted as well, and
15 that had not been determined at that time by Judge Glenn.
16 So I don't think it is as simple as that, but certainly the
17 timing of the transfers is an important component.

18 Q And in your experience as a bankruptcy practitioner,
19 have you ever filed a -- what is referred to as a
20 placeholder proof of claim where you're not sure whether
21 your client in fact has a claim but they might and you want
22 to preserve their rights? Are you familiar with that
23 concept?

24 A So I confess that I'm not. I am primarily a litigator.
25 Though I appear pretty regularly in bankruptcy court, I have

1 not been involved in a process of the kind you just
2 described.

3 Q All right. Well, you had me fooled.

4 MR. AZMAN: Your Honor, that's all the questions I
5 have for Mr. Hurley.

6 THE COURT: All right there any other parties that
7 wish to question Mr. Hurley? Mr. Hurley, when did Akin Gump
8 first become conflicts counsel in general to Celsius?

9 MR. HURLEY: So -- and this is actually something
10 I was going to address in my argument. Akin Gump is acting
11 as conflicts counsel currently with respect to two matters.
12 One is the Voyager matter, and another is a matter related
13 to a company called Rhodium. And there was a retention
14 application that was filed that relates to both of those
15 matters.

16 And as one of the objecting parties correctly
17 points out, that retention application was effective as of
18 October 14, 2022, but that's because it related to both
19 Rhodium and Voyager. Akin Gump's work as conflict counsel
20 with respect to Rhodium did in fact begin in October, but
21 Akin Gump did not bill any time or -- and was not involved
22 as conflicts counsel with respect to Rhodium after November
23 5th.

24 THE COURT: Were you doing any work for Celsius in
25 August of 2022?

1 MR. HURLEY: Yes, but not related to Voyager.

2 THE COURT: All right, but you were conflicts
3 counsel of some kind in August of 2022?

4 MR. HURLEY: Your Honor, we were retained
5 originally as special litigation counsel because Akin Gump
6 had been representing Celsius in some litigation matters
7 pre-petition. So we were specifically retained to handle
8 those two litigation matters. We were then later asked to
9 take on the conflict role when first the Rhodium matter
10 arose and then the Voyager matter arose. But in August, we
11 were not retained as conflicts counsel per se.

12 THE COURT: Okay. So when Kirkland and Ellis
13 filed a supplemental declaration saying that it would not be
14 involved in any issues between Celsius and Voyager that was
15 filed in August of 2022, had anybody approached you at that
16 point to ask you to be involved in issues between Celsius
17 and Voyager?

18 MR. HURLEY: Not at that point, Your Honor.

19 THE COURT: It wasn't until November that somebody
20 did so?

21 MR. HURLEY: It was not until November that we
22 were asked to handle the Voyager matters, correct.

23 THE COURT: Okay. I have nothing further.

24 MR. HURLEY: Okay. So Your Honor, I guess that
25 brings us to the argument unless there's any other business

1 you want to take care of first or questions you have before
2 we move onto that.

3 THE COURT: Is there any other evidence that any
4 of the parties wish to introduce?

5 MR. AZMAN: Your Honor, I thought that the Debtors
6 would move into evidence the omnibus wallet agreement and
7 the assignment agreement. I don't believe they've been
8 entered yet, have they?

9 THE COURT: No.

10 MR. AZMAN: I guess I will move to admit them into
11 evidence.

12 THE COURT: Any objections?

13 MR. HURLEY: No objection from Celsius, Your
14 Honor.

15 MAN: No objection from the Debtors, and we agree
16 with moving them in evidence.

17 THE COURT: All right. They're admitted into
18 evidence. I don't have an explanation anywhere as to why
19 notice was sent to Celsius UK as late as it was on September
20 23rd. What's the reason for that?

21 MR. WHALEN: Your Honor, Michael Whalen from Paul
22 Hastings. Celsius was identified by Voyager on an amended
23 Schedule G, which is the disclosure of executory contract.
24 So we were identifying the wallet agreement with Celsius as
25 a potential asset of the estate. They were not identified

1 as a Creditor, and we still took the step of sending notice
2 of the bar date to Celsius. We did not believe then,
3 frankly we don't believe now that they're properly a
4 creditor, though that is an issue for later.

5 So you know, it accords with our view as Debtors
6 and as Debtor counsel as we do in most cases that more
7 notice is better. But our view here, you know, we think the
8 issue of actual notice is secondary because, particularly in
9 light of the testimony we just received, it seems abundantly
10 clear to the Debtors that Celsius, with respect to this
11 preference claim, was an unknown Creditor, and thus did not
12 need and was not entitled to actual notice.

13 THE COURT: We'll get to argument in a second. My
14 question was why notice wasn't sent until September 23rd.

15 MR. WHALEN: Yes, Your Honor. And that was just a
16 function of when we identified those contracts and we
17 amended the schedules shortly before that, I believe
18 September 15th, and then we got notice packets together as
19 promptly as possible and sent them out thereafter after
20 identifying those contract counterparties so that we could
21 get notice to them.

22 THE COURT: And do I know one way or the other
23 whether the notice was returned as undeliverable?

24 MR. WHALEN: No, Your Honor. We can identify
25 that. I don't believe -- well, I won't say anymore, but we

1 can identify that.

2 THE COURT: Well, we've got the evidentiary record
3 today, so we don't know is basically what the answer is.

4 MR. WHALEN: Yes, Your Honor.

5 THE COURT: Anything else for the evidentiary
6 record? All right. We'll close the evidentiary record
7 then. We'll have argument, but first we'll take a five-
8 minute recess, okay?

9 MR. WHALEN: Yes, Your Honor.

10 (Recess)

11 THE COURT: All right. I have returned. I
12 thought I put my phone on mute, but somehow my entire
13 connection was divert, but I'm back. Are the parties ready
14 to proceed?

15 MR. HURLEY: Yes, Your Honor.

16 THE COURT: All right. Mr. Hurley, I have to tell
17 you that much of your argument is that it would've been
18 unreasonable for Voyager to -- or excuse me, for Celsius to
19 have stumbled upon this claim on its own by the process of
20 preparing its schedules because there was such voluminous
21 information, and it's just not reasonable to say that
22 anybody could've filtered out and found this particular
23 claim just based on the preparation of the schedules.

24 But that all assumes, I think, that Celsius --
25 that nobody at Celsius knew or should've known about the

1 Voyager bar date. Because isn't it the whole point of a bar
2 date that you're supposed to separately figure out whether
3 you have a claim against that particular Debtor? You know,
4 we don't ordinarily, for example, let people come in and get
5 relief from the bar date just by saying that, well, that's
6 not information I would've ordinarily come across in the
7 ordinary course of my business, or I didn't look at it
8 because the statute of limitations wasn't imminent, or
9 things like that.

10 The whole point is if you know or should've known
11 about the bar date, you're supposed to accelerate your quest
12 to find out if you have a claim against the particular
13 Debtor. Isn't that right?

14 MR. HURLEY: If you know or should've known about
15 the bar date? I think that certainly makes sense to me,
16 Your Honor. You know, obviously here Celsius has said, you
17 know, uniformly that it was not aware of the bar date until
18 after the bar date passed.

19 THE COURT: Well, that's not -- you know, you keep
20 saying that, but your declarations fall far short of that
21 mark. You have one witness who says he didn't know. That's
22 Mr. Ferraro. You have another witness who says that, well,
23 he knew about it in November. He might've known about it
24 before then. He's not sure. And you don't have any
25 testimony as to whether anybody else knew about it. You

1 keep saying that you have testimony that nobody knew, but
2 all your real testimony is, is that one of those guys didn't
3 know and that the mailroom didn't remember seeing the
4 notice.

5 MR. HURLEY: It'd be fair that there are limits to
6 our ability to prove the negative, but certainly based on
7 the inquiries that we made and that the remaining Celsius
8 personnel made, the answer that we've gotten back is that no
9 one was aware of the bar date. I certainly --

10 THE COURT: I have no evidence that any such
11 inquiries were made. Mr. Ferraro said he asked about the
12 mail, and that was the sum and substance of what he did.
13 Mr. -- the other witness said he didn't speak to general
14 counsel about what they knew and when they knew it, for
15 example.

16 MR. HURLEY: Mm-hmm.

17 THE COURT: Which is the place where I definitely
18 would've gone to ask these questions.

19 MR. HURLEY: Mm-hmm.

20 THE COURT: You haven't put in any information
21 about that. I have no declarations from the general
22 counsel. So --

23 MR. HURLEY: That --

24 THE COURT: -- there's a gigantic hole in your
25 showing, isn't it?

1 MR. HURLEY: It certainly is a case you don't have
2 a declaration from the general counsel. We could provide
3 one. We did communicate with the general counsel's office
4 about this issue. I acknowledge we didn't put it in a
5 declaration. If that would be helpful, Your Honor, we can
6 certainly prepare one and provide it. Then --

7 THE COURT: No, I'm not asking to reopen the
8 hearing. We've just had our evidentiary hearing. And look,
9 you know, the Committee raised in its opposition the entire
10 fact that there was an objection in the Celsius case to the
11 retention of Kirkland and Ellis on the theory that it had a
12 conflict because of its representation of Voyager, and that
13 there would be conflicts between Voyager and Celsius.

14 Quite clear from Kirkland's response in August
15 that got from somebody the information that Voyager had had
16 an account and had withdrawn most of what was in that
17 account. And the committee said that, look, this means that
18 Kirkland, which obviously knew of the bar date, also knew
19 about the withdrawals. Your own witnesses have said that
20 just knowing that there were withdrawals was enough to alert
21 a sophisticated bankruptcy party that there are potential
22 preference issues.

23 The whole point of this in the context of the
24 Kirkland retention was whether there are -- were conflicts
25 between Celsius and Voyager, and your own witness says that

1 Kirkland should've told -- probably had an obligation to
2 tell Celsius if there was a bar date and if there was a
3 potential claim. So how do I -- and in response to all
4 that, in response to that issue being surfaced, you put in
5 no further information about who worked on the Kirkland and
6 Ellis retention issues, who at Celsius made the decision
7 about whether there was a conflict, what information they
8 looked at to determine whether there was a conflict, whether
9 they actually had communications with Kirkland about the
10 issue and about what kinds of claims Celsius might have
11 against Voyager, and who would pursue them, and when they
12 should be pursued.

13 You didn't respond to any of those obvious points.
14 And why shouldn't I just infer that the reason you didn't is
15 that the answers are all bad for you?

16 MR. HURLEY: So, two things, Your Honor. First,
17 the August 30th submission you're referring to, that
18 submission did not state that there were withdrawals made
19 during the preference period. It only said that Voyager had
20 -- that had an account balance at Celsius and had drawn down
21 pre-petition substantially on its accounts, but that same
22 thing could be said about literally hundreds of thousands of
23 other customers.

24 So, I don't think any of the Witnesses suggested
25 that just the information in the August 30th submission

1 would have been enough for anyone to conclude that there
2 was, or likely would be a preference claim against Voyager,
3 any more than with respect to any of those many thousands of
4 other creditors that you could say exactly the same thing
5 about.

6 THE COURT: But the whole point of the
7 supplemental declaration was to address the question of
8 whether there were conflicts, (indiscernible) being
9 conflicting interests between Celsius and Voyager. So, I --
10 isn't that something that ought to have been looked at at
11 the time, and discussed at the time?

12 MR. HURLEY: Well, so -- Kirkland made clear in
13 that document and in other statements to the Court that it
14 did not then perceive there to be any actual conflict
15 between Celsius and Voyager.

16 THE COURT: (overlapping conversation) No, no, no,
17 it said that there -- Kirkland wasn't going to handle any
18 issues between Celsius and Voyager. That's what it said.

19 MR. HURLEY: Kirkland also indicated at the
20 hearing in connection with that matter that it believed
21 there were no conflicts between Celsius and Voyager, which,
22 I think that hearing was in September.

23 THE COURT: If Voyager had a customer claim, how
24 could that possibly be the case? And you know, you might
25 quibble about what was said in the Kirkland declaration, but

1 you offered nothing. You offered -- you didn't respond to
2 that entire allegation at all. You didn't come forward with
3 where did the information come from, any information as to
4 whether there was anybody at Celsius who was involved in the
5 decision, so who at Celsius made the decision about whether
6 there was a conflict or not, 'cause that had to be made by
7 Celsius. I have to believe that somebody in the Director's
8 offices probably advised by General Counsel had to have been
9 involved.

10 I've heard from none of those people. This entire
11 -- this -- the entire question of what did that tell
12 Celsius, and when did it tell it was just raised by the
13 Committee, but ignored by you in your papers.

14 MR. HURLEY: So, Your Honor, the information that,
15 to this day I understand to be the only information
16 suggesting that there is a conflict is the 90-day preference
17 withdrawals, and the evidence we put forward was that
18 Celsius wasn't aware, and I understand Your Honor's concern
19 about the limits of what our evidence shows in that regard,
20 but that Celsius wasn't aware of those transfers until
21 November.

22 And so, the -- it -- so, the issue wasn't being
23 viewed as an active conflict, but rather there was awareness
24 obviously, because of the objection and for other reasons
25 that Kirkland was representing both companies, but there

1 wasn't, to our knowledge, any actually issue that had become
2 concrete and arisen that caused anybody at Celsius to
3 consider okay, we have a conflict that has to be addressed
4 now. That didn't happen until November.

5 THE COURT: (indiscernible) so you think Kirkland
6 might have known that there were withdrawals, but not when
7 they occurred? If --

8 MR. HURLEY: (overlapping conversation)

9 THE COURT: If that's your answer, wasn't it your
10 obligation to come forward with some evidence on the point?

11 MR. HURLEY: I -- so Your Honor, I -- obviously I
12 don't know exactly what Kirkland knew, but in the document
13 that we're talking about, the August 3rd submission, they
14 provided information only related to -- sorry, that
15 disclosed only that Voyager was a customer and had made
16 withdrawals, not that there were withdrawals during the
17 period that would cause Celsius to believe that it should
18 investigate those withdrawals as (indiscernible).

19 THE COURT: But you're the one who has the burden
20 of showing that there is an excuse for the delay here. You
21 don't do that just by saying well, that evidence isn't 100
22 percent an answer as to when Kirkland knew. All you're
23 doing is raising a question. You didn't go to Kirkland, you
24 didn't ask them what they knew, you didn't find out if they
25 knew about the timing, you didn't find out if they actually

1 appreciated that there was a preference issue, you didn't
2 ask them did you tell that to anybody.

3 You didn't ask them why -- if so why -- if you
4 didn't, why didn't you tell that to anybody. And your own
5 Witnesses have said that Kirkland should have told people.
6 So, whether the -- it seems to me you've got the burden
7 here. You don't satisfy it just by raising questions as to
8 whether the evidence is open and shut, dead set proof
9 against you. You've ignored the issue and given me nothing
10 on it.

11 MR. HURLEY: So, Kirkland is obviously in an
12 awkward position here, because it represents Celsius and
13 Voyager. And it -- we -- you're right, we did not get a
14 declaration from Kirkland with respect to exactly what they
15 knew. But it is certainly our understanding that they did
16 not become aware of the preference transfers until November,
17 and maybe I can provide a little color on that, Your Honor,
18 because what I understand did happen is that in early
19 November, a Celsius creditor flagged an issue related to
20 Voyager for Kirkland, and I believe that's what caused
21 Kirkland to ask A&M to look at the schedules and find out
22 hey, are there Voyager transfers we should be concerned
23 about?

24 And then -- and when the information came back
25 from an A&M, that's when they referred it to Akin Gump.

1 THE COURT: Who was the creditor, and why don't I
2 have any evidence of this?

3 MR. HURLEY: I -- Your Honor I don't have an
4 excuse, I would be happy to provide it to you, I understand
5 the evidence is closed, but if Your Honor would like to see,
6 we certainly can provide it. The creditor is a gentleman
7 named Mr. (Frishburg), I believe is his name. But that
8 happened, as I said, in early November and I -- my
9 understanding is that is what spurred the communication from
10 Kirkland to A&M.

11 THE COURT: On the excuse of (indiscernible)
12 neglect factors on the notice issue, you never actually --
13 you did give Voyager an address and never actually sent
14 notice to Voyager to change that address for notice
15 purposes, isn't that correct?

16 MR. HURLEY: So, the address was included in the
17 2020 original (indiscernible) agreement, and then in 2021,
18 it was amended. The amendment assigned all the rights from
19 Celsius U.K. to Celsius U.S. and E.U. And in that
20 agreement, it doesn't actually repeat the Celsius U.K.
21 address, which I think there was some confusion about in
22 some of the objections. What it provides is that the
23 services to be provided by Celsius U.S. are going to be
24 rendered subject to the terms of use.

25 And it includes a link to the terms of use, and

1 then that --

2 THE COURT: Is there a provision in the wallet
3 agreement, the original one, that says that communications
4 and notices between the parties are to be sent to the
5 following addresses?

6 MR. HURLEY: In the original wallet agreement,
7 yes.

8 THE COURT: Yes. And does that have the address
9 that Voyager used?

10 MR. HURLEY: It does, though the notice that was
11 provided by Voyager actually is not consistent with that
12 agreement. So, that agreement requires, let me just get
13 this for you so I get it right. That notices have to be in
14 writing and given in person by registered mail, by an
15 overnight courier service which obtains a receipt to
16 evidence delivery, or by facsimile or email transmission,
17 with written confirmation of receipt.

18 So, the method of notice here of course was just
19 ordinary U.S. mail, and as Your Honor pointed out, I don't
20 think there was any information provided by the Debtor about
21 whether, either it was any receipt or other information from
22 the required methods of delivery.

23 THE COURT: Well that's -- (indiscernible) let's
24 break that down. The bar date notice is sent by mail,
25 because that's what my order authorized. It's not

1 ineffective just because it failed to comply with con --
2 extra contractual requirements about notice, right?

3 MR. HURLEY: That's fair, Your Honor. I was just
4 pointing out that the contractual provision we were
5 referring to is -- does require a different method of
6 delivery.

7 THE COURT: So, the agreement said send notices to
8 this address, and when the -- you talked about the terms of
9 use, but there's no provision in the addendum, in the
10 assignment agreement that alters what the provision of the
11 agreement that says where notices are to be sent. Right?

12 MR. HURLEY: Certainly not expressly, Your Honor.
13 There is a link to the terms of use, which includes the
14 address for the new counterparty, but it's not expressly
15 described in the amendment.

16 THE COURT: And you don't have any evidence or you
17 haven't given me any that anybody gave or ever gave Voyager
18 notice of a change in the address?

19 MR. HURLEY: That is correct, Your Honor.

20 THE COURT: And how do -- we usually presume that
21 when mailings are sent that they're received, at least if
22 they're correctly addressed. I don't really know how long a
23 change of address lasts on the U.K. system. Do you -- I
24 haven't been given any evidence of that. But, as to actual
25 receipt, all I have is hearsay testimony that somebody in

1 the mail department didn't remember seeing it. But, I don't
2 -- it's not like any human being possibly remembers the
3 details of every single piece of mail that comes through for
4 a big enterprise, is it?

5 MR. HURLEY: That's certainly fair, Your Honor.
6 And again, there's limits to our ability to prove the
7 negative, here.

8 THE COURT: Yeah, I know that.

9 MR. HURLEY: Yeah.

10 THE COURT: I understand. But even so, I mean,
11 the mail department was asked, but I don't know how wide a
12 canvassing -- it doesn't sound like much canvassing was done
13 to anybody else. Who would the mailroom normally have sent
14 it to? Were those people canvassed to see if they actually
15 saw it? Didn't sound like that was done.

16 MR. HURLEY: You know, I have -- with respect to
17 the communications of the mail room, only the testimony that
18 was elicited moments ago by Mr. Ferraro. I certainly had
19 separate conversations with the general counsel's office
20 about the issue, but again, as you pointed out, that isn't
21 in evidence, but that -- we did what we thought we
22 reasonably could to confirm what we believed to be true,
23 which is that this notice, which was sent to an address in
24 London that hasn't been in use by Celsius for like, I guess
25 well over a year, didn't actually wind up being received by

1 anyone at Celsius. And that is our understanding.

2 THE COURT: Okay. And I don't really have any
3 testimony as to whether people did or didn't see the
4 publication notice. Right?

5 MR. HURLEY: You are correct.

6 THE COURT: Then, usually -- it's odd --

7 MR. HURLEY: (overlapping conversation) back up
8 actually, Your Honor, on that answer?

9 THE COURT: Yeah.

10 MR. HURLEY: I guess we do have evidence that Mr.
11 Ferraro didn't, at least not until after the bar date,
12 because Mr. Ferraro said, very clearly, I think, that he
13 didn't know about the bar date until November.

14 THE COURT: You know, we had two different
15 cryptocurrency cases filed within a short period in the
16 Southern District of New York. There hadn't been very many
17 filings in that industry, everybody was interested. It's
18 hard for me to believe that there weren't people at Celsius
19 who were charged with monitoring the docket in the Voyager
20 case, just to see what was happening, because that obviously
21 might shed light on what was going to happen in the Celsius
22 case. Wasn't anybody tasked with that responsibility?

23 MR. HURLEY: Not to my knowledge, Your Honor.

24 THE COURT: Okay. Again though, I don't have any
25 evidence of that, do I?

1 MR. HURLEY: I -- maybe I'm not remembering
2 clearly, and I'm sure I'm not, but I thought that Mr.
3 Ferraro had indicated that he also didn't believe anyone was
4 tasked with that role.

5 THE COURT: All right, on the Debtor's side I have
6 arguments about whether Celsius was a known or an unknown
7 creditor. Aren't your own arguments about why Celsius
8 should have known that it had a claim kind of undercutting
9 your own position as to whether Voyager should have known
10 that Celsius had a claim?

11 MR. HURLEY: I certainly understand the point.
12 One of the focuses that we provide in our reply is on the
13 fact that, unlike the cases that the objectors rely on,
14 Celsius was not a truly unknown entity, like a tort claimant
15 or an employment discrimination claimant would be and was in
16 some of the cases they cited. There was an ongoing
17 commercial relationship, and we are on their schedules. And
18 then the Debtors I think argued, paragraph 21, that there
19 was no way they could have predicted that there would be a
20 preference claim, because they all -- they couldn't have
21 predicted that Celsius would take the position that
22 deposited assets are a state property.

23 And we point out that Voyager, I understand, took
24 a similar position in its own case. And presumably had
25 records of its withdrawals during the period, and it's

1 certainly putting that information together. We think that
2 it's plausible to argue that these are -- that Celsius was
3 ascertainable as a creditor of wager.

4 THE COURT: Yeah, let me ask the same question of
5 Mr. Murphy or whoever's going to speak for the Debtor on
6 this. It seems to me all of your arguments about why
7 Celsius should have known that it had a claim undercut your
8 position that Voyager didn't know that Celsius had a claim.
9 So, you can't have it both ways, can you?

10 MR. WHALEN: Yes, Your Honor, Michael Whalen on
11 behalf of Voyager. I think that there's a key distinction
12 here, which is that as is evident from Celsius' filings and
13 declarations, there was an ongoing commercial relationship
14 between Voyager and Celsius, and the very nature of the
15 preference claim is that Celsius has taken a position that
16 assets that they believe are assets of the estate have
17 exited the estate. But, in the course of their commercial
18 relationship prior to Celsius making the preference claim,
19 we were engaged in ordinary course transactions, which
20 included withdrawing those funds.

21 So, the fact that they existed in our commercial
22 relationship would give Voyager every reason to believe that
23 Celsius viewed those assets to be property of Voyager, that
24 Voyager could withdraw, indeed did withdraw. Celsius also
25 has taken a slightly different position than Voyager. While

1 it is true that Voy --

2 THE COURT: Let me stop you. Let me stop you.

3 While you -- while the Voyager assets were in the earned

4 accounts, right? (overlapping conversation) Saying that

5 they belong to Celsius and not to Voyager, and that

6 Voyager's claim was an unsecured creditor claim is exactly

7 akin to the same position that Voyager itself took with

8 respect to its own equivalent of the earn accounts, isn't

9 it?

10 MR. WHALEN: Yes, Your Honor, but we think that

11 the added distinction of Celsius' position as to title in

12 the withhold accounts is relevant and also the, again,

13 ordinary course of the commercial relationship, these are

14 defenses that we would obviously raise if and when we get to

15 a preference action, but it was entirely reasonable for

16 Voyager to believe that, unless asserted, or at least even

17 noticed, that there was no claim from Celsius with respect

18 to these amounts.

19 THE COURT: Well, isn't there a claim of

20 preference based on the dates of transfers from the earn

21 accounts to the withhold accounts, rather than the dates of

22 withdrawals from the withhold accounts?

23 MR. WHALEN: I -- yes, Your Honor, but there was

24 even some uncertainty in Celsius' own papers initially when

25 they filed, that they at least raised the possibility in one

1 of their first-day motions that they could assert ownership
2 over withhold account amounts as well. That has since come
3 out differently, after some litigation in front of Judge
4 Glenn, but at least initially they had even taken that
5 position.

6 So, there was a lot of uncertainty around the
7 position that they were ultimately going to assert.

8 THE COURT: Well, the withhold accounts didn't
9 exist before the preference period, is that right?

10 MR. WHALEN: To be candid, Your Honor, we are not
11 entirely sure of the date at which the withhold accounts
12 came into effect. We, on our end, had a long period of
13 engaging with the platforms where there was only one
14 account, and then at some point we noticed that there was an
15 additional account, an additional step involved in
16 withdrawing them, but we did in fact observe that and use
17 that pathway to take our funds off, and some did, in fact,
18 come off during the preference period that's alleged by
19 Celsius.

20 THE COURT: Okay. You know, on many of the -- let
21 me ask the Debtors and the Committee. On many of the
22 factors here, it seems to me, whether there would be a
23 significant impact on the proceedings, whether there would
24 be significant prejudice, whether there is good faith, I
25 don't see that there's really much to say for the Debtors

1 and the Committee's position. The argument about prejudice
2 is built on cases that have said well, even if this is a
3 small one, I might get a gigantic influx of other claims
4 from other people. Given the nature of this claim and the
5 circumstances, how could that possibly be a worry?

6 MR. AZMAN: Your Honor, it's Darren Azman from
7 McDermott for the Committee. We now have several additional
8 crypto Chapter 11 cases that have been filed since Voyager.
9 I don't think it's without -- outside the realm of
10 possibility that other of these estates that are out there
11 could take a similar position here. I actually am very
12 concerned about it.

13 And you -- Your Honor's aware of certain arguments
14 that FTX and its affiliates have raised about claims that
15 they may have in these cases. They may very well be coming
16 to Your Honor shortly to ask for inexcusable neglect to file
17 a crypto claim.

18 THE COURT: FTX didn't even have any right to
19 recover preferences until it filed its own case, which was
20 after the Voyager bar date, right?

21 MR. AZMAN: Your Honor, I'm hesitant to speak on
22 that issue, because it's under investigation, but that's --
23 doesn't sound wrong.

24 THE COURT: Yeah, I'm not -- you know, the idea of
25 whether I would get a claim from another cryptocurrency or

1 other Debtor that might have a preference claim, it just
2 seems ludicrous to suggest that that's going to open the
3 floodgates and raise a lot of issues. I might have claims
4 from later filing cryptocurrency cases that might raise bar
5 date issues about whether they should be fairly held to the
6 bar date when they didn't -- weren't in bankruptcy, and
7 therefore didn't have a preference claim at the time, those
8 to me seem entirely different issues.

9 MR. AZMAN: That's fair, Your Honor. I mean, the
10 other thing I'd mention is that if you look at the Second
11 Circuit case law on this, it's not just whether there's a
12 significant impact on creditor recoveries or comparing the
13 size of the claim to the total creditor pool, but if you
14 look at cases like Northwest Airlines, Northwest Airlines
15 says that the argument that a claim is de minimis, when
16 viewed in the context of an entire case, was rejected by the
17 Second Circuit in the Enron case.

18 So, that -- just because it's a small drop in the
19 bucket, and nobody can (indiscernible) that, right,
20 \$7,000,000 here is a small drop in the bucket in their
21 creditor's claims pool, but that's not the test. The test
22 is that de minimis doesn't make it not important. And
23 \$7,000,0000 --

24 THE COURT: Let me push back on that. If the rule
25 were as you say, then every single motion for relief from

1 the bar date would be deemed to be prejudicial, and it
2 wouldn't even be a factor for the Court to consider.

3 MR. AZMAN: Oh, I don't agree. So, I guess I --
4 let me finish my point, so my point was Court should and do
5 look at the aggregate dollar amount as a whole number,
6 whether it's a lot. I think we all agree that \$7,000,000 is
7 a big number. \$50,000, not so much. \$100,000, not so much
8 in a complex Chapter 11 case, but by any measurement,
9 \$7,000,000 is a lot of money. I think most of the creditors
10 who lost their life savings in this case would agree that
11 \$7,000,000 is a lot of money.

12 THE COURT: By the way, I actually don't think
13 that prejudice is supposed to be measured by the size of the
14 claim. It seems to me prejudice is supposed to be measured
15 by whether the late filing, as opposed to a timely filing,
16 is prejudicial to you. And I don't see how a late filing of
17 this particular claim would make any difference to you in
18 terms of whether it's filed now or whether it had been filed
19 on October 1st. Tell me where I'm wrong.

20 MR. AZMAN: Well, I guess I would go back to the
21 fact that that is not the most important factor that Courts
22 consider in determining whether excusable neglect has been
23 satisfied. It's the reason -- I know that's not answering
24 your question directly, but I take Your Honor's point.

25 THE COURT: Okay.

1 MR. WHALEN: And Your Honor, Michael Whalen for
2 the Debtors. We would agree. You know, we would highlight,
3 as Mr. Azman did, that the predominant point is the excuse,
4 and that if there's no sufficient excuse that can overcome
5 even favorable factors elsewhere, but we do agree with Your
6 Honor's reading, but we think that it's a bit of a balance
7 between timing and amount and it's something inequitable
8 between (indiscernible), but this does relate somewhat back
9 to the plan negotiation point, and that we are approaching,
10 you know, we're closing in on a month from the confirmation
11 hearing.

12 So, there would be some administrative burden, but
13 even if we were to agree with Your Honor, we would go back
14 to the point that we think excuse is the main -- the key
15 issue here.

16 THE COURT: Okay. Anything else anybody wishes to
17 argue or to raise on the excusable neglect issue?

18 MR. HURLEY: Your Honor, it's Mitch Hurley. If I
19 could just make a couple of points on excusable neglect.
20 And I think what I really want to do is kind of zoom out and
21 make a bigger picture point, which is that the kind of
22 timeframe that we're talking about, in terms of the delay
23 from the bar date until when this motion is filed, in the
24 spectrum of cases that have been cited by all the parties,
25 is really very brief.

1 So, the bar date was October 3rd, we filed our
2 motion on December 13th. And if you measure the delay from
3 the date of discovery of the claim in early November, the
4 period shorter, and then this, I just want to make sure this
5 is clear to Your Honor, that much of the time between when
6 Akin Gump was retained in November until we filed in
7 December was because we were working with the Debtors to see
8 if we could come to a resolution that wouldn't require this
9 motion practice.

10 So, we actually contacted them, basically to
11 request the relief we're seeking on the motion now,
12 consensually, on November 15th, and then they -- we
13 contacted Kirkland, and Kirkland told us on that call that
14 Quinn Emanuel was going to handle the conflict issue. Took
15 some time for us to be able to get on the phone with Quinn,
16 they weren't available right away. They then asked us, I
17 think it was -- our call was on November 28th, I believe,
18 our first one. Sorry, on December 1st.

19 They asked us to put our request in writing, which
20 we did and sent over on December 2nd. And then on December
21 6th, Quinn actually told us that Paul Hastings was going to
22 be handling the matter for Voyager, and so we then spoke to
23 Paul Hastings on December 8th, and again on the 12th, and
24 they indicated that they were -- had to discuss it with UCC
25 counsel, and at that point, we hadn't given up hope on a

1 negotiated resolution.

2 But that's when we filed, the next day. So, the
3 period of time is brief, even I think if you include that
4 settlement period, and even shorter if you don't. And from
5 our perspective, if you look at the cases cited by the
6 parties, and there were dozens, there really aren't any
7 cases where the period of delay is as short as what I just
8 described. And where you have a situation here, like here,
9 where the Claimant has not said -- you can almost -- all
10 those other cases, the Claimants actually expressly admitted
11 that it was aware it had the claim before the bar date
12 passed, and that it was aware of the bar date. In almost
13 all of those cases.

14 So, a situation like this one, where we've put in
15 evidence, I know Your Honor has questions about whether more
16 evidence could have been supplied, but we put in evidence
17 that Celsius wasn't aware of the claim before the bar date
18 passed and wasn't aware of the bar date itself until after
19 it passed, and then couple that with the relatively short
20 delay, and I really do submit, this case is just different
21 than all of the other cases that are relied on by the
22 Objectors in those particular regards.

23 And in addition, in the se -- because the motion
24 obviously was filed before there was a confirmed plan, as
25 you were just discussing. So -- but that's, I guess kind of

1 the big picture point I would want to make with respect to
2 excusable neglect. I really do think this is, in terms of
3 sort of the spectrum of use kinds of cases, is very far on
4 the side of a comparatively short delay where you have this
5 circumstance of the actual lack of knowledge of the claim
6 and of the bar date before the bar date passed, which is, in
7 their cases, in almost every one, there's not even a dispute
8 about whether the Claimant knew about the existence of the
9 claim, and in many cases knew about the existence of the bar
10 date. So, I do think it's a very different case, and more
11 favorable for Celsius on excusable neglect.

12 THE COURT: Is there anything else?

13 MR. AZMAN: Your Honor, I apologize, I just --
14 it's Darren Azman again, I just wanted to make two brief
15 points, but I'm not sure if Mr. Hurley was done.

16 MR. HURLEY: Go. Go ahead.

17 MR. AZMAN: Okay. Your Honor, on the excusable
18 neglect standard, I take Mr. Hurley's point on this not
19 being a year delay and there not being significant prejudice
20 in terms of the overall creditor body here. I get all that,
21 but if you read all of the case law collectively, what you
22 come away with is that those are elements that can taint
23 your excusable neglect claim, if you waited two years or if
24 there's significant prejudice.

25 But they aren't elements that can satisfy the test

1 alone. Those are elements that Courts look to to
2 (indiscernible) the claim, if you otherwise satisfied the
3 remaining elements, including the most important one, which
4 is the reason for the delay. And so, I think it's a bit of
5 a distraction to say well, it's not as bad as it could have
6 been. Because I agree, it's not as bad as it could have
7 been. They did act relatively quickly within a couple of
8 months, that's undisputed. But that doesn't solve the
9 shortcomings that we've brought out through testimony today,
10 through all of the Witnesses.

11 And so, on excusable neglect, I just -- I don't
12 think those el -- other elements, they carry the day. They
13 cannot carry the day for satisfying excusable neglect
14 standard when the most important element here is not
15 satisfied. The other point I want to make, which we've
16 touched on a little bit, is that Celsius was not a known
17 creditor. Celsius has tried to distinguish the XO
18 Communications case on a number of grounds in their
19 briefing, and I agree, there are differences in the facts,
20 but none of those distinctions alter the conclusion.

21 A preference claim, particularly under these
22 unique and novel circumstances, is not a known claim. Judge
23 Gonzalez stated in the World Comm case, which is cited by
24 Celsius, this Court found in in re: XO Communications that
25 an entity that holds a preference claim is not generally

1 considered to be a known creditor of a Debtor based solely
2 on the preference.

3 And this is continuing to quote, in that case,
4 meaning XO Communications, it was the -- it was determined
5 that constructive notice through newspaper publication, as
6 was provided here, would be proper. Your Honor, Celsius can
7 distinguish the XO case all it wants, but the holding's
8 clear. A Debtor with a preference claim is not a known
9 creditor, and as such, Voyager's notice by publication alone
10 was sufficient. Your Honor, that's all I have to add.

11 MR. WHALEN: Your Honor, Michael Whalen for the
12 Debtors. I would just echo the points that Mr. Azman made,
13 particularly with respect to the differences between the
14 time of the delay and the reasons for the delay, which are
15 distinct pioneer factors, and it's certainly a -- not news
16 to Your Honor as you have referred to these points multiple
17 times, but a Second Circuit has repeatedly taken a hard line
18 approach to the pioneer factors and held that the Second
19 Circuit itself continues to expect that a party claiming
20 excusable neglect will, in the ordinary course, lose under
21 the pioneer test.

22 So, while it may be seemingly a harsh result or a
23 unique case, this is exactly how the pioneer test was
24 crafted, and we have nothing else from our end.

25 MR. AZMAN: May I respond very briefly, Your

1 Honor?

2 THE COURT: Go ahead.

3 MR. AZMAN: Okay. So, the cases though, and the
4 facts of the cases that the objectives rely on, and again I
5 mentioned this before, but their cases were, usually the
6 delay is measured in years, sometimes in decades. Not in
7 every case. There's a couple they cited where the delay is
8 shorter, and I guess arguably more comparable to the period
9 of time we're talking about here, but they're otherwise
10 distinguishable. So, XO for instance, in that case the
11 motion for lead to file the lay claim was made about seven
12 months after the bar date.

13 So, obviously that period's longer than the one
14 here, but the facts are also different for really the
15 reasons I just identified, Your Honor. So, in that case,
16 the Claimant, Trilegiant, appears to have been aware it had
17 a preference claim against XO before the bar date ran.
18 Trilegiant had filed for bankruptcy more than a year before
19 the XO bar date, which means of course, that its preference
20 claim arose more than a year before the bar date.

21 According to the Court, the record, and this is a
22 quote, the record reflected that Trilegiant was aware that
23 it had preference claims, and not only that, that it was
24 aware of the amount of the preference claim against XO,
25 because the Court said it was large enough that the size of

1 that preference claim should have caused Trilegiant to make
2 further inquiries that would have led to discovering the
3 time of the bar date. But not only did Trilegiant not make
4 those inquiries, it chose to wait. It made what the Court
5 described as an informed decision, notwithstanding knowing
6 about its claim, not to pursue preference claims until after
7 Trilegiant's own bankruptcy was finished.

8 In contrast here, Celsius is only just a little
9 bit more than two and a half months into its bankruptcy
10 proceeding by the time the Voyager bar date passed. We put
11 in evidence that in fact, it's not typical on a complex case
12 for there to be a preference analysis, in that period of
13 time, at the beginning of a case, and to their credit,
14 Voyager doesn't dispute that. They acknowledge that that's
15 right. And I think that raises another important
16 distinction. On -- in (indiscernible), it at least appeared
17 that the preference claim against XO was one of like, a
18 comparative handful, but as you heard from the testimony
19 here, just based on the nature of Celsius' business, there
20 were literally hundreds of thousands of potential preference
21 Defendants.

22 600,000 mo -- or more customers with balances on
23 the platform. Most of whom probably made withdrawals at
24 various times, and certainly thousands of them, as -- would
25 have done so during the preference period. So, there's

1 really -- there's no reason to think, unlike in the XO case,
2 that the wager information should have stood out to Celsius
3 the way the large amount of the XO claim did in
4 (indiscernible). And the other sort of short timeframe case
5 they cite, Your Honor, is Eagle-Picher, that's a 1993 case
6 from the Southern District of Ohio.

7 And it's really the same grounds that can
8 distinguish them and most of the other cases from ours. In
9 that case, the Claimant admitted it received actual notice
10 of the bar date a full three months before the bar date
11 expired, and the Claimant did not dispute that it was fully
12 aware that whole time of the existence of its claim against
13 the Debtor. Instead, it just tried to justify its failure
14 to file by the known bar date because its other duties and
15 priorities took precedence. The Court read that and said
16 that specifically in the opinion, it's expressing
17 indifference to the requirement to comply with known Court
18 ordered -- a known Court ordered bar date.

19 And that the Claimant had just flouted the bar
20 date, even though the Claimant knew about its claim and knew
21 about the bar date. And that is another factor that we
22 submit just distinguishes this case from all the ones that
23 are relied on by the objectors, and we haven't seen a case
24 with similar circumstances that result in a request for a
25 leave to file a late claim being denied. Thank you, Your

1 Honor.

2 THE COURT: All right, I think we're starting to
3 get repetitive, so I'm ready to make a ruling unless there's
4 something new that anybody wishes to add. All right. The
5 parties have argued as to whether relief from the bar date
6 should be granted in favor of Celsius to file a preference
7 claim against Voyager. The Voyager debtors and the
8 Committee have made arguments about whether or not, for
9 example, Celsius was a known creditor or not, and what kind
10 of notice it was entitled to, and there have been arguments
11 about the notice that was sent.

12 I do not think those really are decisive at all in
13 regard to the excusable neglect inquiry. They might have
14 been decisive if we had a due process contention here, but I
15 don't believe we do. Celsius admittedly had signed an
16 agreement with Voyager that had a contractual provision in
17 it as to where notice was to be sent, and while Celsius
18 argues that Voyager maybe could have figured out that a
19 different address was appropriate, there is no evidence that
20 Celsius ever notified Voyager of a new address, or that the
21 subsequent agreement that they entered into made any change
22 to the contractual provision, which said that notices were
23 to be sent to that address.

24 I therefore don't think there's any due process
25 issue as to the addressing of the notice, and where it was

1 sent, and it was supplemented by publication notice. I'm
2 not at all convinced by Voyager's arguments about whether
3 Celsius was or was not a known creditor, because as I said
4 during the argument, so much of what Voyager and the
5 Committee are arguing as to why Celsius allegedly should
6 have known that it had a preference claim against Voyager
7 kind of cuts the other way as well, in terms of whether
8 Voyager ought to have known that Celsius had a claim against
9 Voyager.

10 The argument that it's an unknown claim just
11 because sometimes people don't pursue preferences, I realize
12 that's in one reported decision, I don't find that
13 persuasive at all. The arguments that the Celsius parties
14 have made about how gosh, they couldn't have been expected
15 to find this needle in a haystack regarding Voyager because
16 they were putting together such huge schedules might have
17 some effect if there was no reason to think that Celsius
18 actually knew, or should have known about the bar date
19 itself, and the theory there would be that the only thing
20 that alerted them they had a claim was their own review of
21 their own business records in their own bankruptcy case.

22 I understand that argument, but it's all premised
23 on something that the evidence failed to establish, which
24 was the notion that Celsius did not know, and had no reason
25 to know of the bar date. And of the need to find out

1 whether it had a claim against Voyager, and to pursue that
2 within the time that had been -- that -- the deadline that
3 had been set by the Court. One of the Witnesses, Mr.
4 Ferraro, said that he wasn't aware of the bar date, but it
5 doesn't appear that he made any inquiry of others, he didn't
6 testify as to any inquiry of others.

7 His inquiry was focused on whether he could find
8 anybody who remembered receiving a notice that had been
9 mailed to Celsius U.K. He didn't find anybody in the mail
10 room, mail department who remembered seeing the notice,
11 which is not particularly strong evidence, in my regard,
12 even on the issue of whether Celsius U.K. actually received
13 the notice that might have been forwarded to it. But beyond
14 that, in terms of whether anybody actually knew at Celsius
15 U.K. or anywhere else within Celsius, I only have Mr.
16 Ferraro's testimony that he didn't know, and I have
17 equivocal testimony, quite frankly, by the other Witness,
18 Mr. Bixler, who says that well, he certainly knew about it
19 in November.

20 Might have known about it before then, but he
21 isn't sure. In terms of an enterprise claiming that it
22 didn't know about the bar date, that's a pretty thin
23 (indiscernible), to say the least. But, of greater concern
24 to me is the fact that Celsius' counsel, Kirkland & Ellis,
25 are the same attorneys, not just the same law firm, but for

1 heaven's sake, the same attorneys who represent Voyager, and
2 who made the bar date motion in the Voyager case.

3 The idea that Celsius' own counsel wasn't aware of
4 the Voyager bar date is a non-starter. Of course they knew
5 about it. Celsius argued in its papers that somehow that
6 wasn't within the scope of Kirkland & Ellis' employment for
7 Celsius, but its own Witnesses agreed during testimony today
8 that Kirkland & Ellis, if it knew about a bar date and knew
9 about preference issue, had an obligation to tell that to
10 Celsius.

11 Furthermore, what is particularly troubling to me
12 is that these issues should have been looked at when a
13 customer of Celsius objected to the retention of Kirkland &
14 Ellis, specifically on the ground that there were potential
15 conflicts between Voyager and Celsius, and therefore that
16 Kirkland & Ellis was in a conflict position, because it
17 represented Voyager and was proposed to represent Celsius.
18 Any bankruptcy professional knows that one source of
19 potential conflict is a preference claim, and it appears
20 that some review of the Voyager records with Celsius was
21 done, and that Kirkland & Ellis then filed a supplemental
22 declaration on August 30th, more than a month before the
23 Voyager bar date, that acknowledged that Voyager had been a
24 customer of Celsius, and that Voyager had made withdrawals.

25 Doesn't explicitly say when the re -- withdrawals

1 occurred, but I have no reason to think that Kirkland &
2 Ellis wasn't aware of those dates. More importantly, I
3 can't -- I will not assume that only Kirkland & Ellis was
4 making the decisions as to whether it was conflicted.
5 Somebody at Celsius had to make a decision as to whether
6 there was a conflict, and whether Kirkland & Ellis should be
7 retained in light of whatever the Voyager issues were.
8 Somebody had to be providing the information, should have
9 been, at least, looking at it from the point of view of
10 Celsius.

11 I would assume somebody, some Director or some
12 higher level officer who was working with Kirkland and
13 making the hiring decisions, perhaps the general counsel,
14 perhaps both. Somebody, when that objection was made on
15 behalf of Celsius, should have been looking at it and
16 asking, well, what are the potential issues? And again, the
17 testimony was that Kirkland & Ellis, if it saw a potential
18 preference issue, should have told Celsius.

19 Well, I find it hard to understand in August, once
20 Kirkland & Ellis knew that there were -- had been
21 withdrawals and knew obviously, of the Voyager bar date, why
22 under Celsius' own testimony, that doesn't mean that
23 Kirkland -- that seems to me that means under Celsius' own
24 testimony that Kirkland should have explicitly said Celsius,
25 here it is. You know, I'm your counsel, and here's

1 something you need to look at, because there's a bar date
2 out there.

3 There can't be any question that Kirkland & Ellis
4 itself knew about the bar date. I am especially troubled
5 that after the Committee and the Debtor raised the issue
6 about Kirkland's statements and about how somebody had
7 obviously looked at some aspect of this in August, Celsius
8 ignored the issue completely, made no further declarations,
9 offered no further evidence as to who at Celsius might have
10 worked with Kirkland on that issue, might have been aware of
11 the issue, what communications they had with Kirkland about
12 the issue.

13 Absolutely nothing on that point. And while the
14 two Witnesses who were proposed, Mr. Bixler and Mr. Ferraro
15 said that they weren't asked until November to look into
16 these issues, and one of them, Mr. Bixler said it was
17 Kirkland that asked him, there's no indication that anybody
18 tracked backwards to see who else at -- in the counsel
19 department at Celsius or any of their Directors or any of
20 the other people who'd communicated with Kirkland, what
21 questions they had had, and what discussions they had had
22 about the -- these issues.

23 If, as Mr. Hurley agreed during argument the test
24 is whether Celsius knew or should have known about the bar
25 date, should have had actual knowledge, no question that its

1 counsel had actual knowledge. And there's no question under
2 the circumstances in my mind that it should have been
3 discussed. So, in the absence of any reason -- any evidence
4 as to whether it was discussed, or any explanation as to why
5 -- if it wasn't discussed, why it wasn't and why that should
6 excuse Celsius, I'm required, I think, to find on the
7 evidence that there's insufficient showing that there was a
8 valid reason for the delay.

9 I think on the other factors, if I were -- on the
10 length of time on the delay, it seems to me that there was a
11 one-month delay before the issue was raised with Voyager,
12 and a two-month delay before the motion was actually filed.
13 That's not a particularly long period of time. If I were
14 completely convinced that Celsius had had no prior reason
15 even to know that there was a preference claim or a bar date
16 in the Voyager case, that might be persuasive.

17 But, in the context here, it's not enough, it
18 seems to me, if Celsius should have known, for Celsius to
19 say well, you know, we shouldn't be required to do anything
20 earlier than we -- then it took us to compile the full
21 schedule. The whole point of a bar date notice, whether
22 it's delivered to a Debtor or to anybody else, is that
23 you're supposed to prioritize in your efforts to figure out
24 whether you have a claim, and to get it filed before the
25 deadline.

1 So, the fact that it didn't surface in the
2 ordinary course of the Celsius proceedings would only be an
3 excuse if there was no other reason, and no other actual
4 knowledge of the bar date. But I am -- as I said, Celsius'
5 primary bankruptcy counsel obviously knew about the bar
6 date, so the argument that there was no actual knowledge
7 that was or should have been com -- submitted to Celsius
8 itself seems to be missing here.

9 So, I am going to deny the motion, but without
10 prejudice. It's tempting to say we've had our factual
11 hearing today, but I want to be perfectly fair to all the
12 parties, if Celsius wants to renew the motion because it
13 thinks it can actually excuse what happened or that there's
14 actually explanations for what happened with Kirkland or
15 better reasons why I should find that the issues that were
16 clearly surfaced in connection with the Kirkland retention
17 somehow didn't and shouldn't have alerted Celsius to the
18 existence of the claim and the need to take action, then
19 they can try to convince me today of that.

20 But, based on the record that I have so far, they
21 have not done so. And so, the primary factor that I have to
22 consider is whether there is a valid reason for the delay
23 they have failed to meet. And there is some delay, there is
24 some prejudice, they're not particularly onerous to the
25 point where they would overcome and -- other factors, but I

1 think the primary factor of the Second Circuit
2 (indiscernible) to look at is not satisfied here.

3 And you can't, if you have failed to satisfy that
4 factor, you can't get relief just by saying that it's only a
5 short period of time, or just by saying that it's not
6 particularly prejudicial. Those are factors to be weighed,
7 but we're the primary factor. So, plainly, it's not met. I
8 think on this record it isn't, here. And I think I have to
9 deny the request for relief of the party.

10 Let me make another point. This is not a
11 particularly huge claim or a huge amount at issue. I worry
12 about how much effort has already gone into it, and how much
13 money that the parties are spending on it. How much, in
14 light of the amount that's at stake, that really makes sense
15 in the grand scheme of things. Perhaps the parties ought to
16 sit down with Kirkland & Ellis and find out what it knew and
17 what it said and if it didn't say anything, why it didn't
18 say anything. And make some reasonable judgements among
19 themselves as to what it's fair to do under these
20 circumstances.

21 I am not going to get to the question of whether
22 stay relief should be granted, because since there's no
23 claim that can be pursued, there's no reason for stay
24 relief. But, I will say to alert the parties on this point
25 that, to the extent that the Debtors have implied that they

1 wish to make arguments about the withhold accounts and
2 whether they were or were not property and whether prior
3 transfers to the withhold accounts should be treated as
4 preferences, those are issues Judge Glenn is going to be
5 deciding as to many customers, and if it -- if those are
6 going to be issues, or were to be issues in opposition to a
7 claim, and if I were to allow a late claim, then there is no
8 way I would entertain a separate litigation of those issues
9 in my Court.

10 If there are other defenses, then I'm not 100
11 percent convinced that the -- they would need to be decided
12 by Judge Glenn as opposed to by me, or that it would be
13 appropriate to do so, but we'll deal with that if and when
14 we ever get up to a point where submitting a late claim
15 should (indiscernible). All right? Is there anything else
16 I need to rule on? Did I forget anything?

17 MR. HURLEY: Not from Celsius' perspective, Your
18 Honor.

19 THE COURT: Okay. All right, and you agree on the
20 form of an order, please, and submit it?

21 MR. HURLEY: Certainly.

22 MR. AZMAN: Yes, Your Honor.

23 THE COURT: Is there anything else to be done
24 today? Okay. Thank you very much. In that case, we are
25 adjourned. Thank you.

1 MR. HURLEY: Thank you, Your Honor.

2 MR. AZMAN: Thank you, Your Honor.

3 (Whereupon these proceedings were concluded at
4 1:36 PM)

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RULINGS

Page Line

Motion denied without prejudice

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: January 27, 2023